

**ARTICLES 1F AND 33(2) OF THE 1951
REFUGEE CONVENTION**

1. INTRODUCTION	3
2. THE ARTICLE 1F EXCLUSION CLAUSES - GENERAL	7
2.1. Background	7
2.2. Approach to consideration of the asylum claim - general	7
2.3. Approach where Articles 1A and 1F may both be relevant	8
2.4. Standard of proof	9
2.5. Burden of proof	9
2.6. Issues of complicity, culpability and responsibility	9
2.7. Persons already punished for the Article 1F crime or act	11
2.8. Extradition	11
2.9. No balancing test	12
3. APPLICATION OF ARTICLE 1F(a) - CRIMES AGAINST PEACE, WAR CRIMES AND CRIMES AGAINST HUMANITY	13
3.1. Location where the crime was committed	14
4. APPLICATION OF ARTICLE 1F(b) - SERIOUS NON-POLITICAL CRIMES	15
4.1. Definition of "Serious crime"	15
4.1.1. Link to approach taken to Article 33(2).....	15
4.2. "Non-political crime"	16
4.3. "Outside the country of refuge"	17
5. ARTICLE 1F(c) - ACTS CONTRARY TO THE PURPOSES AND PRINCIPLES OF THE UNITED NATIONS	19
5.1. Actions by non-state persons	19
5.2. Terrorism	20
5.3. Membership of a terrorist organisation (including proscribed organisations)	21
5.4. Location where the act was committed	22
6. UNACCEPTABLE BEHAVIOURS	22
7. CANCELLATION OR REVOCATION OF REFUGEE STATUS ON ACCOUNT OF ARTICLE 1F	23
8. ARTICLE 33(2): EXPULSION OF A REFUGEE	24
8.1. Introduction	24
8.2. Application of Article 33(2)	25

8.2.1.	Special legislative arrangements. Procedure for consideration of claim	27
8.3.	Interpretation of key terms/concepts in Article 33(2)	28
8.3.1.	“Danger to the security of the country”	28
8.3.2.	“Danger to the security of the country” and link to Article 1F(c)	28
8.3.3.	A “particularly serious crime” and “constitutes a danger to the community of that country”	29
8.3.4.	A “particularly serious crime” and Article 1F	31
8.3.5.	A “particularly serious crime” committed abroad	32
8.3.6.	Detention in a hospital	33
8.4.	No “balancing” test	33
9.	ARTICLE 32 OF THE REFUGEE CONVENTION	33
10.	EXCLUSION AND FAMILY MEMBERS/DEPENDANTS	34
11.	CASES WHERE ARTICLE 1F OR 33(2) APPLIES BUT REMOVAL IS NOT POSSIBLE	35
12.	APPEAL RIGHTS	36

ARTICLES 1F AND 33(2) OF THE 1951 REFUGEE CONVENTION

1. INTRODUCTION

This Instruction gives guidance on the use of the Article 1F exclusion clauses, and on the Article 33(2) exception to the principle of *non-refoulement* (i.e. no enforced removal of a refugee to a place where his life or liberty would be threatened).

Article 1F applies to persons who are not considered to be deserving of international protection. It excludes some asylum seekers from the protection of the 1951 Convention. **It is a mandatory exclusion and therefore where it is applicable it should be relied upon.**

The full text of Article 1F is as follows:

“The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;*
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;*
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”*

The 1951 Convention contains two other exclusion clauses, Article 1D and Article 1E. Article 1D is concerned with persons already receiving UN protection. For information on this, see the ***API on Applications for Asylum from UNRWA Assisted Palestinians: Article 1D of the Refugee Convention***. Article 1E is concerned with persons not in need of international protection. For information on this, see the ***API on Assessing the Claim***.

Article 33(2) provides that in some circumstances persons can be removed to another country, even though they may have a well-founded fear of persecution there.

This Instruction also covers Article 32, which sets out the general rules to be observed in connection with the expulsion of a refugee/asylum seeker lawfully present in the United Kingdom.

If Article 1F or 33(2) applies, a grant of asylum should be refused but this does not mean that removal will always be possible. ECHR and other humanitarian considerations should be addressed as in any other application.

Key points to note in this API are:

- General approach to asylum claim: where Article 1F or 33(2) may apply, the normal procedure is to consider the asylum claim in its totality, i.e. the well founded fear issue (Article 1A(2)) as well as the applicant’s position with regard to Article 1F or 33(2).

- “Belt and braces” refusal: where grounds exist for refusing a claim both under Article 1F/33(2) and under Article 1A(2), caseworkers should do so using both grounds, not one alone, in order to assist the Presenting Officer at any subsequent appeal.
- Level of proof in Article 1F: in Article 1F the phrase “serious reasons for considering” should be given its natural meaning and not be further defined.
- Person already punished for an Article 1F crime: the fact that a person has been convicted and punished for an offence does not mean that Article 1F does not apply. **The 1951 Convention contains no requirement to regard the crime as expiated by the punishment.**
- Complicity, culpability: in cases where there is evidence that the person had some involvement in the commission of a crime (or of an act, in Article 1F(c) cases), without personally committing it, Article 1F may still apply.
- Possible defences by an applicant: defences for a crime or act, which may be valid, depending on the circumstances, are coercion, duress, or self-defence. If the evidence that the defence applies is sufficiently strong such that there are not “serious reasons for considering” that a crime or act has been committed Article 1F will not apply. The showing of remorse for the crime or act is not a defence.
- Extradition: where an individual is subject to an extradition request from a country in which he/she stands accused or convicted of a criminal offence, the evidence submitted in support of that request may be enough to show that there are “serious reasons for considering” a crime has been committed which would fall under Article 1F. Individual consideration should be given to each case and SC3 (Judicial Co-operation) should be notified of any such case via a senior caseworker.
- **No balancing test – Article 1F: in considering whether Article 1F applies in a case where the person appears to have a well founded fear of persecution, there is to be no weighing up (“balancing”) of the amount of persecution feared against the gravity of the Article 1F crime or act which it is considered has been committed.**
- No balancing test – Article 33(2): similarly, when considering whether Article 33(2) applies, there is to be no weighing up of the gravity of the likely threat to a person’s life or freedom if they were removed against the danger they pose to national security or to the community.
- Definition of a “serious” crime: there is no list of serious crimes in the Convention, and no definition of a serious crime in UK law. The s.72 NIA definition of a “particularly serious crime” for the purposes of Article 33(2) – a crime for which a custodial sentence of at least two years has been imposed, or which is listed in the section 72

offences Order – should be taken as a general guide to what amounts to a serious crime for the purpose of Article 1F(b).

- A political crime: the approach to be applied is that set out in the case of *T v Secretary of State for the Home Department* (1996):
“A crime is a political crime for the purposes of Article 1F(b) of the 1951 Convention if and only if: (1) it is committed for a political purpose, that is to say with the object of overthrowing or subverting or changing the government of a state or inducing it to change its policy; and (2) there is a sufficiently close and direct link between the crime and the alleged political purpose.” (See also paragraph 4.2 below.)
- A non-political crime: under Article 1F(b), a crime will be “non-political” if, broadly speaking, it was committed essentially for personal reasons or gain and no political motives were involved; or where the crime did appear to be politically motivated but the crime committed was not sufficiently closely related to the claimed political end.
- Acts of terrorism: acts of terrorism are contrary to the purposes and principles of the United Nations, and therefore fall within Article 1F(c). United Nations Security Council Resolutions (UNSCRs) 1373 and 1377 also clarify that terrorist acts are contrary to their purposes and principles: “acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations” and that “knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the UN”. Furthermore, section 54 of the Immigration, Asylum and Nationality Act 2006 also provides that acts contrary to the purposes and principles of the United Nations shall be taken as including acts of committing, preparing or instigating terrorism, or encouraging or inducing others to do so. Such acts of terrorism are not generally political crimes and may therefore also fall within Article 1F(b).
- Revocation of refugee status: revocation of refugee status should be considered where, subsequent to the grant of asylum, a person commits a crime or act which falls within the scope of Article 1F(a) or (c).
- Cancellation of refugee status: cancellation of refugee status may be appropriate if information comes to light which was not known about at the time of the original decision, – about a crime or acts committed prior, or subsequent, to arrival in the UK, but previous to the grant of refugee status – which would have justified the application of Article 1F at the time the person’s asylum claim was first considered.
- Cessation of refugee status: when consideration is given to applying Article 33(2) to a recognised refugee consideration should also be given to whether the person has ceased to be a refugee due to a significant and non-temporary change of circumstances in their home country, or whether their own actions show that they are no longer in

need of protection in the UK. In such cases it is possible to take away refugee status by applying the Article 1C cessation clause.

- Dealing with potential 1F or 33(2) cases. **When considering whether the exclusion clauses apply in an individual case, caseworkers should take account of all relevant information. Such claims should be assessed with the same fairness as claims not raising exclusion issues.**

2. THE ARTICLE 1F EXCLUSION CLAUSES – GENERAL

2.1. Background

In order to be granted asylum an asylum applicant must satisfy the criteria in paragraph 334 of the Immigration Rules. Sub-paragraph (ii) states that the applicant “is a refugee as defined in regulation 2 of the Refugee or Person in need of International Protection (Qualification) Regulations 2006” (the QD Regulations).

Regulation 2 of the QD Regulations defines a “refugee” as a third country national or stateless person who falls within 1(A) of the Geneva Convention and to whom regulation 7 (of the QD Regulations) does not apply. Regulation 7 sets out that a third country national or stateless person is not a refugee if he or she falls within the scope of Article 1F of the Geneva Convention.

Paragraph 339A(vii) of the Immigration Rules also provides that a person’s grant of asylum will be revoked or not renewed if the Secretary of State is satisfied that he should have been or is excluded from being a refugee in accordance with regulation 7 of the QD Regulations.

These provisions implement Articles 12 and 14 of the EC Qualification Directive which sets out the minimum standards for the qualification and status of persons as refugees.

The provisions in Article 1F are mandatory and asylum should be refused to a person to whom it applies.

The full text of Article 1F is as follows:

“The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

- (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;*
- (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;*
- (c) he has been guilty of acts contrary to the purposes and principles of the United Nations.”*

2.2. Approach to consideration of the asylum claim – general

Having considered all relevant issues with care, caseworkers should use Article 1F to refuse asylum, in all instances where it is applicable. Where Article 1F applies, the person concerned cannot be a refugee.

As with the other provisions of the Convention, the possible use of the exclusion clauses should be considered in the light of the applicant's individual circumstances: any claim for asylum must be assessed on its own merits. Prior to making their assessment, caseworkers must try to obtain as full a knowledge as possible of the facts, and of the context in which the alleged crime(s) or act(s) have been committed.

2.3. Approach where Articles 1A and 1F may both be relevant

Caseworkers should consider both whether an applicant has a well-founded fear of persecution as defined in Article 1A of the Refugee Convention (inclusion) and whether that applicant falls to be excluded by virtue of Article 1F of the Convention.

If the asylum claim falls for refusal on Article 1A grounds - but the exclusion provisions under Article 1F are relevant – the RFRM should first deal with the exclusion on Article 1F grounds and then go on to deal with inclusion under Article 1A, including any credibility issues. In the event that one aspect of the refusal, either under 1A or 1F, is not upheld at the appeal stage the 'belt and braces' approach ensures that full reasons are provided for all aspects of the decision. For further guidance refer to the **Asylum Process Manual** on *Handling Applications from Convicted Criminals. Persons on Remand and Detained Cases*.

Where Article 1F applies section 55 of the Immigration, Asylum and Nationality Act 2006 provides that the Secretary of State can issue a certificate to that effect. The Asylum and Immigration Tribunal (AIT) or the Special Immigration Appeals Commission (SIAC) must then begin substantive deliberations on any asylum appeal by considering the certificate. If the AIT or SIAC agree with the statements in the certificate, they must dismiss the asylum claim i.e. they must consider exclusion first and if they agree that the person is excluded they need not consider whether Article 1A of the Convention applies.

Credibility

Cases will arise where an individual's claim is considered to lack credibility, but were that claim true, it would engage Article 1F. In such cases it cannot be said that there are "serious reasons for considering" the individual has committed the crime/act which would bring him within Article 1F as we do not believe the event occurred in the first place. As such these cases should not be certified under section 55 of the IAN Act 2006, but following consideration under Article 1A(2) and any credibility issues, the caseworker should clearly state that if the claim were considered to be credible, the individual would be excluded under Article 1F.

2.4. Standard of proof

Article 1F applies if “there are serious reasons for considering” that the person concerned has committed certain crimes or acts. Whichever limb of Article 1F applies, the person does not have to have been prosecuted or convicted of any offence in any country. However, evidence of a conviction will normally provide serious reasons for considering that the person has committed the crime. Where there is a conviction caseworkers will not normally need to examine at length the evidential basis for the conviction, but should keep in mind the possibility that a criminal prosecution or conviction in the country of origin may itself constitute evidence of persecution. An asylum claimant who was a known opponent of his or her country’s Government could, for example, be the victim of false charges.

It should also be noted that evidence of the acquittal of a person accused of a crime should not necessarily be taken to mean that exclusion is inappropriate. Each case should be considered on its own merits and advice sought where necessary.

The phrase “serious reasons for considering” should be given its natural meaning. “Serious reasons for considering” does not suggest a level of proof equivalent to that needed for a criminal conviction (“beyond reasonable doubt”), or a finding in a civil case (“balance of probabilities.”). In the case of *T v Secretary of State for the Home Department*, the Court of Appeal, when considering Article 1F, took the view that there was no requirement to make a positive or conclusive finding about the commission of one or more particular crimes; it sufficed that “the evidence pointed strongly to the appellant’s guilt.” This means evidence that is not tenuous or inherently weak or vague, and which supports a case built around more than just suspicion.

In connection with the standard of proof, see also paragraph 2.8 if information about a possible crime comes to light as a result of an extradition request.

2.5. Burden of proof

When applying Article 1F, the evidential burden of proof rests with the Secretary of State. It is for the Secretary of State to show that it applies i.e. to adduce evidence to this effect, not for the applicant to show that it does not.

2.6. Issues of complicity, culpability and responsibility

All three limbs of Article 1F can raise issues about the nature of a person’s involvement in a possible crime or act. There are also some issues here which are specific to Article 1F(c) (see section 5).

Sometimes there will be “serious reasons for considering” not that a person has directly committed a crime or act which falls within Article 1F, but that they have been involved in the planning of that crime or act to a greater or lesser extent. There will be circumstances in which planning of the act or crime itself will be enough to bring a person within one of the three limbs of Article 1F. Indeed, such involvement, depending on whether the act planned was capable, if it was carried out, of constituting a crime, may amount to the offence of “conspiracy to commit” a particular crime. Such involvement may, depending on the circumstances, itself be a serious crime, and hence engage Article 1F(b). Similarly the planning/involvement must amount to a war crime etc. if Article 1F(a) is to be engaged. This point, however, does not apply to Article 1F(c), where the reference is to a person who has been guilty of “acts” rather than “crimes”.

Caseworkers must assess the extent of the applicant’s involvement in, and knowledge of, the crime or act in question which they (the applicant) helped to plan or in which they were otherwise involved. For example, individual responsibility would arise where a person was directly involved in the planning of an offence, or incited, assisted with, or otherwise took actions to encourage or support the commission of a crime or act. On the other hand, where a person’s actions were marginal to the offence (for example, mere presence at the scene of a crime and no evidence of involvement in or, active support for, the planning of the crime) it will be less likely that the person has committed a crime or act that engages one of the limbs of Article 1F.

It is important always to treat each case on its facts. The significance which should be attached to an individual’s contribution to the crime may depend on factors such as the size of the criminal enterprise, the functions performed, the position of the individual in the organisation, and in particular the role of the individual in relation to the seriousness and scope of the crimes committed. An individual’s personal circumstances may be relevant when ascertaining the level of knowledge they had of what they were participating in. A child or mentally disabled individual, for example, may carry a lesser degree of responsibility for a crime or act compared to an adult who has full mental capacity.

Sometimes there will be sufficient information to meet the “serious reasons for considering” test, but a question will arise as to whether a person has a “defence” for the crime or act they committed. The showing of remorse for the crime or act is not a defence, nor is the argument that a person was following a superior’s orders. Defences which may be valid, depending on the particular circumstances, are coercion, duress or self-defence. A key issue will always be the extent to which the individual’s freedom of choice not to engage, or be involved, in the criminal act was undermined. For example, where the person is a child (e.g. a conscript in an army) the possibility of having succumbed to coercion may be more likely than in the case of an adult. Each case should nevertheless be considered on its merits.

2.7. Persons already punished for the Article 1F crime or act

There may be some cases where the serious reasons for considering that an applicant has committed an Article 1F crime or act are that prosecution took place and the person was punished for the offence. Such cases are probably most likely to arise in relation to Article 1F(b) – serious non-political crimes committed outside the country of refuge.

Subject to caseworkers being satisfied that all the necessary elements of Article 1F are met, the exclusion clause should be applied, as there is no provision in the Convention not to exclude a person on the basis that they have been punished for their crime or act.

2.8. Extradition

Extradition is the compulsory return of a person (“the fugitive”) from one country in which he (or she) is found to another in which he stands accused or convicted of a criminal offence. For an extradition request to be made, there generally needs to be a pre-existing extradition arrangement in place between the countries concerned – that is to say, a bilateral treaty or a multilateral instrument to which both countries are parties.

Not all criminal conduct is extraditable. Generally, an extraditable offence is one which attracts a sentence of at least 12 months’ imprisonment in both countries (“dual criminality”), or where a person has been convicted of an offence in respect of which a sentence of 4 months imprisonment has been imposed.

Where an individual is subject to an extradition request evidence supporting that request may be sufficient to show that there are “serious reasons for considering” that a crime has been committed which would bring that individual within Article 1F of the Refugee Convention. In all cases individual consideration should be given to the specific facts of the case.

Some countries (44 currently) do not have to provide prima facie evidence of a person’s guilt in support of an extradition request. If a country does not have to provide evidence, the fact of an extradition request may be of little assistance in establishing a link between the crime and the person being extradited.

All of the UK's other extradition partners do have to provide such evidence. In the case of these countries this evidence will be considered by a District Judge who, if satisfied on this issue, as well as some others, will send the case to the Secretary of State for his decision on extradition. This will mean that a link is established between the crime and the person being extradited. The fact that the Judge has sent the case to the Secretary of State for a decision will not necessarily be enough, without more, to provide "serious reasons for considering" a crime has been committed although papers supporting the extradition request may provide sufficient evidence. A decision not to send the case to the Secretary of State may well suggest that there are not "serious reasons for considering" that a crime has been committed (in which case Article 1F would not apply). However, such a decision may be based on other factors so the reason for the decision should always be established.

Extradition requests involving asylum seekers or refugees are not likely to arise very frequently, but when they do it is essential that SC3 (Judicial Co-operation) and Asylum Policy Unit are consulted by a Senior Caseworker so that they can provide advice and assistance as required. It is most important that all parties in these cases liaise closely to ensure that the asylum process is completed as quickly as can be consistent with fairness and thoroughness.

Ministers must be consulted before a person who is the subject of extradition proceedings or claims to be a fugitive from justice is granted asylum or other form of leave such as Humanitarian Protection or Discretionary Leave.

See also section 6 on cancellation of refugee status where the person against whom the extradition request is made is a recognised refugee and has been granted asylum rather than being an asylum seeker.

2.9.No balancing test

Article 1F of the Convention provides that a person shall be excluded from its provisions where the conditions set out in that Article are met. In considering whether or not Article 1F applies in the case of a person who appears to have a well-founded fear of persecution, there should be no weighing up ("balancing") of the extent of persecution feared against the gravity of the Article 1F crime or act. Section 34 of the ATCS Act 2001 provides that there is to be no such balancing test. The EC Qualification Directive also reiterates this point clearly stating that a person is excluded from being a refugee where the provisions of Article 1F apply.

This is not to say that the risk of mistreatment a person may face if returned to their country of origin or elsewhere are not to be addressed. It will need to be addressed in the context of whether that person's removal would be a breach of the UK's obligations under the European Convention on Human Rights. See *APIs* on *ECHR* and *Assessing the claim* for further guidance.

3. APPLICATION OF ARTICLE 1F(a) - CRIMES AGAINST PEACE, WAR CRIMES AND CRIMES AGAINST HUMANITY

The Government's policy is to ensure that the UK does not provide a safe haven for war criminals or those who commit crimes against humanity, and that action is taken to bring such individuals to justice wherever possible. Securing criminal convictions in such cases can be difficult. Invoking Article 1F(a), followed by removal action if appropriate, is another way of ensuring that the hospitality of the UK is not abused by those who there are serious reasons for considering have been involved in the commission of atrocities.

Information concerning a potential Article 1F(a) case may reach the relevant caseworking section via the War Crimes Unit (WCU). In other instances caseworkers are expected to take a common-sense approach and assess whether Article 1F(a) applies on the basis of the information available on file and the relevant country information. In any event, the War Crimes Unit must be consulted about any decision to rely on Article 1F(a). It is possible that a person who comes to notice on account of alleged Article 1F(a) crimes may be subject to a UN or EU travel ban. This would have implications for any existing leave that such a person might have at the time the asylum claim was made

There is no one single set of definitions accepted for Refugee Convention purposes by UK and international courts, but detailed definitions of "war crimes" and "crimes against humanity" are contained in the International Criminal Court Statute, and have been incorporated into UK law by the International Criminal Court Act 2001. For practical purposes, caseworkers should use the definitions set out in the ICC Statute and the ICC Act 2001 (available from APU on request). It may also be necessary to seek advice from WCU on whether a particular set of circumstances might constitute a war crime or a crime against humanity.

A “crime against peace” has been defined as including planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances (see Annex V of the UN Handbook).

A “war crime” involves the violation of international humanitarian law or the laws of armed conflict. Such violations may include murder or ill-treatment of civilian populations or of prisoners of war, the killing of hostages, or any wanton destruction of cities, towns or villages, or devastation that is not justified by military necessity.

“Crimes against humanity” differ from war crimes (which occur only during times of armed conflict) in that they *can be committed at any time*. However, in times of armed conflict a single act could constitute both a war crime and a crime against humanity. The term “crime against humanity” would generally be used where crimes such as murder or rape have been committed *as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack*. Inhumane treatment of this kind may often be grounded in political, racial, religious or other prejudice. Such treatment would include murder, enslavement, torture, deportation or forcible transfer of population and enforced disappearance of persons.

“Genocide” is not specifically referred to under Article 1F(a) of the 1951 Convention, but has now been defined by the ICC Statute and can be considered as falling under the general clause of 1F(a). The term “genocide” would generally be used where crimes such as murder, serious bodily or mental harm, or imposing measures intended to prevent births within a group, are committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group.

A policy of committing acts against a civilian population does not have to have been formally written down or recorded, but it would be necessary to identify something that clearly amounted to a deliberate campaign against, or general attack on, a civilian population, rather than simply a series of random violent acts. A single act might qualify as a crime against humanity, provided it was linked to a general policy to attack a civilian population.

3.1. Location where the crime was committed

Article 1F(a) can be invoked irrespective of the location where the alleged crime was committed. Thus, if a person committed a relevant crime whilst they were in the UK, Article 1F(a) would be applicable.

4. APPLICATION OF ARTICLE 1F(b) – SERIOUS NON-POLITICAL CRIMES

For a person to be excluded from the protection of the 1951 Convention under Article 1F (b) it must be established that there are serious reasons for considering that he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee.

NB. The criminal offence must be both a criminal offence where it was committed and must be capable of constituting a crime under UK law.

4.1. Definition of "Serious crime"

4.1.1. Link to approach taken to Article 33(2)

The Convention does not list offences which are to be treated as "serious" crimes. Section 72 of the Nationality, Immigration and Asylum Act 2002 deals with the construction and application of Article 33(2). It provides that a "particularly serious crime" includes any offence for which a custodial sentence of at least two years is imposed. In relation to offences committed overseas, a particularly serious crime is an offence for which a custodial sentence of at least two years was imposed and for which a sentence of at least two years could have been imposed had the person been convicted of a similar offence in the United Kingdom.

Section 72 (subsections (4) and (5)) also enables the Secretary of State to specify particular offences in an order, so that a person convicted of a specified offence, irrespective of the length of sentence, falls within the scope of Article 33(2) and is presumed to constitute a danger to the community. The order is also relevant in the case of a person convicted of an offence outside the UK, provided the offence is similar to an offence specified in the order. An Order (The Immigration (Specification of Offences) Order 2004) has been made under this power and came into force on 12 August 2004. **See Annex A.**

It would normally be appropriate to regard any crime for which a custodial sentence of two years upon conviction might be expected (if that crime was tried in the United Kingdom) as a “serious crime”. A crime should also be regarded as “serious” where, regardless of the actual length of sentence, or the length of sentence which might be expected if the crime were tried in the United Kingdom, it is similar to an offence specified in the s.72 order mentioned above. **In cases of doubt refer to APU, via a senior caseworkers, for guidance on establishing whether an overseas crime is ‘similar’ to one listed in such an order. (Note that for the purposes of Article 1F(b) the issue of whether a person is a danger to the community does not need to be considered.)**

Since the term “serious crime” covers a wider set of cases than the term “particularly serious crime” it is possible that a crime falling outside the criteria of s.72 might still be within 1F(b) e.g. where a sentence would be 1-2 years for a crime that is not on the list of offences in the s72 order, but which nevertheless appears serious. In such cases advice should be sought from SCWU and APU.

It should be stressed that this is general guidance and should not be applied in an overly rigid way. In any potential Article 1F(b) case caseworkers are not asked to predict precisely the possible sentence that might be imposed were the person to be tried and convicted, as it is difficult to predict what sentence might be passed in relation to a particular offence.

4.2. “Non-political crime”

A “non-political crime” must be distinguished from a “political crime” when applying Article 1F(b). Article 1F(b) can only be applied to the former. Caseworkers should consider in the first place the nature and purpose of the crime. If the crime was committed essentially for personal reasons or gain, and no political motives were involved, the crime will be non-political.

Even if a crime has a political motive, it may still be regarded as non-political for the purposes of Article 1F(b) in some circumstances.

Regulation 7(2)(a) of the Qualification Directive Regulations provides interpretative guidance on Article 1F(b) of the Refugee Convention. It states that a “particularly cruel action” will be held to be a “serious non-political crime” for the purpose of Article 1F(b), even if it is committed with an allegedly political objective”.

In *T v Secretary of State for the Home Department* (1996), the House of Lords held that Article 1F(b) applied to a refugee who been involved in terrorist acts which killed innocent people, and rejected the argument that the acts were not “non-political” for the purposes of Article 1F(b). In *T* the following definition of a political crime was used:

“A crime is a political crime for the purposes of Article 1F(b) of the 1951 Convention if and only if: (1) it is committed for a political purpose, that is to say with the object of overthrowing or subverting or changing the government of a state or inducing it to change its policy; and (2) there is a sufficiently close and direct link between the crime and the alleged political purpose. In determining whether such a link exists, the court will bear in mind the means used to achieve the political end, and will have particular regard to whether the crime was aimed at a military or governmental target, on the one hand, or a civilian target on the other, and in either event whether it was likely to involve the indiscriminate killing or injuring of members of the public.”

Consistent with the reasoning in “*T*”, the commission of “common law” crimes such as murder, rape and serious assault, or other violent acts which result in indiscriminate harm or death to the public, will usually fail to establish a sufficient link to the achievement to a political objective and should be considered to be “non-political” crimes for the purposes of Article 1F(b). A link may be established if such methods are used against specific targets that are political in nature (e.g. government representatives etc) and are committed for political motives.

Although they will fall outside the boundaries of Article 1F(b), it should be noted that individuals who have committed political crimes might in some cases be found to fall within the scope of Article 1F(c).

4.3. “Outside the country of refuge”

Article 12 of the EC Qualification Directive provides that a third country national or stateless person is excluded from being a refugee where there are serious reasons for considering that he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee.

Regulation 7(2)(b) of the Qualification Directive Regulations sets out that in the construction and application of Article 1F(b) the reference to the crime being committed outside the country of refuge prior to his admission as a refugee shall be taken to mean up to and including the day on which a residence permit is issued. This implements Article 12 (2) (b) in the Directive.

In the majority of cases this provision in the Regulation will apply to crimes committed abroad but in some instances it could apply to crimes committed whilst seeking asylum in the UK up to the date that a residence permit is issued. Normally, an offence committed “outside the country of refuge” (i.e. the UK, for the purpose of these instructions) will have taken place in the country of nationality/habitual residence, but it could also have been committed in another country prior to the person’s admission to the UK as a refugee. However, in line with Regulation 7 (2) (b), a person who commits a serious non-political crime whilst applying for asylum and before being granted a residence permit in the United Kingdom could also be excluded from the protection of the refugee convention under Article 1F(b) and not be granted asylum on the basis of that crime. Where the requirements of Article 33 (2) of the Refugee Convention are met, a grant of asylum should also be refused on that basis.

As above, where a crime is committed in the UK *following* the issuing of a residency permit article 1F(b) does not apply. However, the application of Article 33(2) might be appropriate (see section 7).

In rare cases it could happen that a crime, such as conspiracy to import drugs, was committed both overseas – before the asylum seeker came to the UK - and also in the UK after arrival. “Continuous crimes” such as this can still be considered as “being committed outside the country of refuge” for the purposes of Article 1F(b).

5. ARTICLE 1F(c) – ACTS CONTRARY TO THE PURPOSES AND PRINCIPLES OF THE UNITED NATIONS

This clause provides for exclusion where there are “serious reasons for considering” that the person “has been guilty of acts contrary to the purposes and principles of the United Nations.”

The purposes and principles of the United Nations are set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations and are, amongst others, embodied in the United Nations Security Council Resolutions relating to measures combating terrorism (UNSCRs 1373 and 1377) which declare the “acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations” and that “knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations”. Article 1 of the Charter lists four purposes, namely to:

- maintain international peace and security;
- develop friendly and mutually respectful relations among nations;
- achieve international co-operation in solving socio-economic and cultural problems, and in promoting respect for human rights; and
- serve as a centre for harmonising actions directed to these ends.

Member states are bound together by these purposes, through a series of principles set out in Article 2 of the Charter. These include:

- respect for sovereign equality;
- good faith fulfilment of obligations;
- peaceful settlement of disputes;
- refraining from the use of force against the territorial integrity or political independence of another state; and
- the promotion of the work of the United Nations.

5.1. Actions by non-state persons

Article 1F(c) applies to whoever commits an act which is contrary to the purposes and principles of the United Nations. That person does not have to be acting on behalf of a State. Individuals acting in a non-State capacity should be excluded under 1F(c) where their actions merit it.

UNSCR 1377 reinforces this view by stating the UN Security Council’s “unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by *whomever* committed”. Furthermore, in the case of KK the Immigration Appeals Tribunal explicitly rejected the argument that only those in power or a state or state like entity should be covered by Article 1F(c).

5.2. Terrorism

Terrorism is contrary to the purposes and principles of the United Nations. For example, the Security Council Resolution 1373(2001) adopted by the Security Council on 28 September 2001, declares at Article 5 that:

“...acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations.”

Security Council Resolution 1377 (2001) has determined that acts of international terrorism constitute a threat to international peace and security and are contrary to the purposes and principles of the UN.

In addition, Security Council Resolution 1624 (September 2005) also calls upon States to adopt measures, consistent with international obligations, to prohibit by law incitement to commit a terrorist acts or acts and to deny safe haven to those for whom credible evidence exists that they have been guilty of such conduct. The resolution also repudiates attempts at the justification or glorification of terrorist acts that may incite further terrorist acts.

Section 54 of the Immigration, Asylum and Nationality Act 2006 also provides that acts contrary to the purposes and principles of the United Nations shall be taken as including:

- Acts of committing, preparing or instigating terrorism (whether or not the acts amount to an actual or inchoate offence) and,
- Acts of encouraging or inducing others to commit, prepare or instigate terrorism (whether or not the acts amount to an actual or inchoate offence).

Caseworkers should refer to this interpretation of the meaning of Article 1F(c) when considering whether to apply the exclusion clause.

A definition of what constitutes terrorism has been set out in UK law in the Terrorism Act 2000 (as amended by the Terrorism Act 2006). See *Annex D* of this instruction for further details.

Caseworkers should keep in mind that persons who engage in acts of terrorism may also be excludable under Article 1F(b) as terrorist acts will often be “non-political” (see guidance above, e.g. section 4.2).

5.3. Membership of a terrorist organisation (including proscribed organisations)

An asylum applicant may claim at interview or in correspondence that they are a member or a supporter of a terrorist organisation or any other organisation proscribed under the Terrorism Act 2000. Claims of this kind may be false, made purely to enhance an applicant's asylum claim. Where, however, the applicant makes a credible claim of membership but has not personally participated in acts contrary to the provisions of Article 1F, the applicant may still fall to be excluded.

The approach to be taken, consistent with the Immigration Appeal Tribunal's view expressed in *Gurung* (October 2002), is that "mere membership" of a proscribed [terrorist] organisation at the time of the commission of acts or crimes proscribed by Article 1F is not enough to bring the person concerned within the 1F exclusion clauses. On the *Gurung* test, however, where the organisation concerned is one whose aims, methods and activities are predominantly terrorist in character, it may be sufficient for little more than simple membership of and support for such organisations to be taken as acquiescence amounting to complicity in their terrorist acts. The more active the terrorist group and the more active the participation the more likely it is that Article 1F(c) will apply.

In order to justify exclusion under Article 1F(c) on the basis of membership of a proscribed organisation, it will be essential, as the IAT put it, "to establish that the [individual] has been a voluntary member of such an [extremist] organisation who fully understands its aims, methods and activities, including any plans it has made to carry out any acts contrary to Article 1F." As an example the IAT suggested that it would be wrong to regard the mere fact that a person had provided a safe house for LTTE combatants as sufficient evidence that an excludable offence had been committed. If, however, the person had transported explosives for LTTE combatants in circumstances "where he must have known what they were to be used for, there may well be a serious 1F issue." (See also section 2.6 above on issues of complicity etc).

Under section 54 of the Immigration, Asylum and Nationality Act 2006 acts of committing, preparing, or instigating terrorism, or encouraging others to do so, amounts to an act "contrary to the purposes and principles of the United Nations" and therefore falls within the scope of Article 1F(c). Caseworkers should therefore take this into account when making a decision on whether members of a proscribed organisation can be considered to fall within 1F(c). Caseworkers should consider exclusion particularly carefully where there is evidence that an individual has been convicted of an offence under section 11 of the Terrorism Act 2000 (belonging, or professing to belong, to a proscribed organisation).

5.4. Location where the act was committed

As with Article 1F(a) (but unlike Article 1F(b)), an act contrary to the purposes and principles of the United Nations will fall within Article 1F(c) irrespective of where and when that act was committed.

6. UNACCEPTABLE BEHAVIOURS

In August 2005 the Home Secretary published a list of certain types of behaviours which would form the basis for excluding and deporting individuals from the UK. The list, finalised following a two week consultation period, makes clear that the Home Secretary will use his powers to deport and exclude from the UK those who engage in these types of behaviours.

The list of unacceptable behaviours includes using any means or medium including:

- writing, producing, publishing or distributing material
- public speaking including preaching
- running a website or
- using a position of responsibility such as teacher, community or youth leader

to express views which:

- foment, justify or glorify terrorist violence in furtherance of particular beliefs
- seek to provoke others to terrorist acts
- foment other serious criminal activity or seek to provoke others to serious criminal acts, or
- foster hatred which may lead to inter-community violence in the UK.

This list is indicative, not exhaustive.

Insofar as the unacceptable behaviours falls within the scope of Article 1F they will result in exclusion. However, the list of unacceptable behaviours also includes some behaviours which may not fall within the scope of Article 1F and therefore should not lead to exclusion under that Article.

However, some unacceptable behaviours whilst falling short of inclusion within Article 1F may be captured by other provisions such as section 72 of the NIA Act 2002 – see *APU notice on section 72 of the NIA Act 2002: Particularly Serious Crimes* at Annex B for further guidance.

7. CANCELLATION OR REVOCATION OF REFUGEE STATUS ON ACCOUNT OF ARTICLE 1F

There may be occasions where a person has been recognised as a refugee and information subsequently comes to light which provides serious reasons for considering that the person should have been excluded from protection by virtue of Article 1F. In this situation it is possible to **cancel** that person's refugee status on the basis that Article 1F applies. Although there is nothing in the Convention itself which addresses this point (Article 1C of the Convention is concerned with a different matter – cessation of refugee status), paragraphs 117 and 141 of the Handbook acknowledge that refugee status might be cancelled in these circumstances.

There is a second situation in which it may be appropriate to take away a person's refugee status. (In this situation the term **“revocation”** is used rather than **“cancellation”**). That is where, subsequent to the grant of asylum, a person commits a crime or acts in a way which falls within the scope of Article 1F (a) or (c). The possibility of revocation could not arise in respect of Article 1F(b) since the crime would not have been committed prior to that person's admission to the UK as a refugee. Cases where a crime is committed after their admission to the UK as a refugee (which would normally be a crime in the UK but could be a crime outside the UK) should be assessed in accordance with Article 33(2) of the Refugee Convention. However, as there are no geographical or time limitations on Article 1F(a) or 1F(c) crimes/acts, it would be appropriate to consider revocation of refugee status in the event that a crime or act meeting the requirements of those clauses was committed after refugee status had been granted.

Where cancellation/revocation of refugee status is being considered, senior caseworkers should refer to the *API on Cancellation, Cessation and Revocation of Refugee Status* for further guidance on how to proceed.

Cancellation/revocation of refugee status does not of itself affect a person's immigration status and does not therefore attract any statutory appeal right. In practice, however, cancellation/revocation will normally result in curtailment of any extant leave or is likely to result in an attempt to remove the person in question. That action (e.g. the decision to curtail leave or to deport) may trigger appeal rights.

If removal was not possible (e.g. because of the UK's international obligations under Article 3 of the ECHR), action to revoke a person's indefinite leave to enter or remain in accordance with the provisions in section 76 of the Nationality, Immigration and Asylum Act 2002 might be appropriate. (See the *API on Revocation of Indefinite Leave*). Where an individual has limited leave to remain as a refugee curtailment of that leave may be appropriate. (See the *IDI* – Chapter 9, section 5 – on *General Grounds for the Refusal of Entry Clearance, Leave to Enter or Variation of Leave to Enter or Remain*). Such action would also trigger appeal rights.

8. ARTICLE 33 (2) : EXPULSION OF A REFUGEE

8.1. Introduction

Article 1F excludes a person from the protection of the Convention and therefore excludes them from the rights set out in that Convention. A person to whom Article 1F applies is not a refugee, even if they meet the definition in Article 1A(2). Article 33(2) is different. When it applies, it does not exclude a person from being a refugee if they meet the definition in Article 1A(2). Rather, it takes away the key protection afforded to refugees by the principle of *non-refoulement*. This principle is stated in Article 33(1). *Non-refoulement* is the prohibition of the enforced removal of a refugee to a country where that individual's life or freedom would be threatened. (Note: where Article 33(2) applies to a person who has applied for asylum, the asylum claim would fail under the Immigration Rules, even if they were a refugee. See section 8.2.)

Under Article 33(2) enforced removal is permitted only if the refugee either presents a danger to the security of the United Kingdom, or has been convicted of a particularly serious crime and is a danger to the community. The full text of Article 33 ("Prohibition of expulsion or return ("refoulement")"), is as follows:

- "1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.*
- "2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country."*

Paragraphs 334(iii) and (iv) of the Immigration Rules state that in order for a person to be granted asylum the Secretary of State must be satisfied that there are no reasonable grounds for regarding him as a danger to the security of the UK or that if he has been convicted by a final judgement of a particularly serious crime he does not constitute a danger to the community of the UK.

Paragraph 334 (v) of the Immigration Rules provides that an asylum applicant will be granted asylum in the UK if refusing his application would result in his being required to go in breach of the 1951 Geneva Convention, to a country in which his life or freedom would be threatened on account of his race, religion, nationality, political opinion or membership of a particular social group.

Paragraphs 339A(ix) and (x) of the Immigration Rules state that a person's grant of asylum under 334 may be revoked or not renewed if the Secretary of State is satisfied that there are reasonable grounds for regarding him as a danger to the security of the United Kingdom; or having been convicted by a final judgement of a particularly serious crime he constitutes a danger to the community of the United Kingdom. This part of the rules implements Article 14 of the EU Qualification Directive which deals with circumstances when it is appropriate to revoke, end or refuse to renew refugee status.

8.2. Application of Article 33(2)

Article 33(2) is concerned with the danger a person poses to the country of refuge: it may be danger to national security or danger to the community. There are two situations in which it may be possible to rely on Article 33(2).

Recognised refugees

The first is where the person concerned has already been granted refugee status and there are circumstances which lead us to consider whether the person should be removed from the United Kingdom. For example, a refugee may have been convicted of an offence and/or, as part of the sentence of the court, deportation may have been recommended. Or the Home Secretary may have decided to make a deportation order on "non-conducive" grounds (section 3(5)(a) of the Immigration Act 1971) in light of events occurring or coming to light after his recognition as a refugee.

The possibility that the person may no longer be a refugee should be part of the initial consideration of whether removal is permitted by Article 33(2). For example, his refugee status could be called into question due to a significant and non-temporary change in circumstances in the home country. In that event it might be possible to apply the Article 1C(5) cessation clause (i.e. that the circumstances that led to recognition as a refugee have ceased to exist). That would be an alternative or additional basis on which to support removal action. This is because removal based on cessation relies on a view that the person is no longer a refugee; in contrast to using Article 33(2) where removal is permitted in spite of continuing refugee status. If it is considered that cessation and Article 33(2) are both applicable both should normally be relied upon in a decision letter relating to proposed removal action (but see 8.2.1 below). Where cessation is considered to be applicable this reduces (but does not necessarily eliminate) the possibility that removal would breach the ECHR; hence the importance of relying on cessation even where Article 33(2) applies.

Should it be decided that cessation of refugee status should proceed caseworkers should follow the procedures set out in the API on Cessation, Cancellation and Revocation of Refugee Status. Whilst section 76 of the Nationality, Immigration and Asylum Act 2002 enables the Secretary of State to revoke the indefinite leave of a person who ceases to be a refugee for any of the reasons set out in Article 1C (1) – (4), there is no specific power to do so when Article 1C(5) applies. However, the making of a deportation order, which might well follow at a later stage in a case of this kind, will invalidate any leave previously given.

Where cessation of refugee status applies to a refugee with limited leave to remain, as well as following the procedures set out in the API on Cessation, Cancellation and Revocation of Refugee Status, caseworkers should also consider whether curtailment of leave may be appropriate. *(See the IDI – Chapter 9, section 5 – on **General Grounds for the Refusal of Entry Clearance, Leave to Enter or Variation of Leave to Enter or Remain** and the API on **Refugee Leave**).*

Asylum seekers

The second situation in which Article 33(2) may be invoked is where the person is an asylum seeker.

For example, someone convicted of a very serious offence in the UK might apply for asylum whilst they are still in prison. In such a case, it would be possible to apply the Article 1F(b) exclusion clause as the offence was committed prior to their admission to the UK as a refugee, but Article 33(2) might also apply. In such a case, consideration should be given as to whether the criteria for Article 33(2) are met.

It is possible to refuse to grant asylum on the dual basis (i) that they are not, or can no longer be regarded as, a refugee (because Article 1F applies), and (ii) that they also do not qualify for asylum/for protection against removal provided by Article 33(1) of the Refugee Convention (because Article 33(2) applies) by virtue of paragraph 334(iv) of the Immigration Rules.

If the criteria for applying Article 33(2) are met, that person will not be granted leave under paragraph 334 of the Immigration Rules because the applicant must establish that refusal of his claim would require him to go to a country in contravention of the Refugee Convention. Where Article 33(2) applies, removal to a country will specifically be permitted by the Refugee Convention even if a well-founded fear of persecution exists in relation to it. The relevant requirement of paragraph 334 (v) of the Rules is not satisfied.

Furthermore, 334(iii) and (iv) state that in order for a person to be granted asylum the Secretary of State must be satisfied that there are no reasonable grounds for regarding him as a danger to the security of the UK or that if he has been convicted by a final judgement of a particularly serious crime he does not constitute a danger to the community of the UK.

In either of the two situations above, even if a conclusion that Article 33(2) applies is reached, consideration would need to be given to whether removal would be consistent with the UK's obligations under the ECHR – see section 10 below. Where it is found that removal is not possible caseworkers should consult the APIs on Humanitarian Protection and Discretionary Leave to establish whether leave should be granted to the individual.

8.2.1. Special legislative arrangements. Procedure for consideration of claim

Two pieces of legislation have an impact on the use of Article 33(2).

First, section 55 of the Immigration, Asylum and Nationality Act 2006. This is the same provision as mentioned in respect of Article 1F (see sub-section 2.3 above), and the points made there apply equally here: if the Secretary of State decides that an individual is not entitled to the protection of Article 33(1) of the Convention and that Article 33(2) applies on the grounds of national security, then the AIT or SIAC must begin their substantive deliberations on the asylum appeal by first considering the exclusion.

As in Article 1F cases the caseworker should begin by considering the claim under Article 1F (exclusion), and then go on to deal with the inclusion aspect, including any credibility issues that arise.

Section 72 of the Nationality, Immigration and Asylum Act 2002 (see also sub-section 8.3.3 below) (also mentioned at 4.1.1 in respect of Article 1F) also provides that the Secretary of State may certify, for the purposes of Article 33(2), that a person has committed a particularly serious crime and is a danger to the community. If such a certificate is issued, the appellate body must first consider the content of the certificate and determine whether it was correctly issued, and, if they agree that it was, they will regard the certificate as conclusive of the fact that removal would not be contrary to the Refugee Convention before considering any other non-asylum issues raised by the appeal (e.g. human rights).

If s.55 IAN Act 2006 or s.72 NIAA Act 2002 applies to an Article 33(2) case caseworkers should, just as at other times, recognise the importance of considering each case on its individual merits and should ensure that the RFRL provides a detailed consideration of the asylum issues and ECHR considerations.

8.3. Interpretation of key terms/concepts in Article 33(2)

8.3.1. "Danger to the security of the country"

Consideration of this ground for applying Article 33(2) is most likely to arise in connection with people suspected of being involved in terrorism. Some important principles on how to approach national security issues were set out by the House of Lords in the *Rehman* case (October 2001). This involved an appeal against the decision that deportation was conducive to the public good in the interests of national security. These principles are:

- For a person to be a danger to the security of the United Kingdom, the actions (or anticipated actions) of that person need not create a **direct** threat to the UK's system of government or its people. The interests of national security could be threatened **indirectly** by activities directed against other states. Thus the definition of "a threat to national security" is very wide: for example, depending on the specific facts of the case, if someone is believed or known to be a terrorist, then due to the nature of international terrorism, and regardless of the immediate threat of his or her particular terrorist group, it may be reasonable to regard the person as a threat to the UK's national security.
- In *Rehman* the House of Lords stated in effect that there was no specific standard of proof which must be met when deciding whether a person is a danger to national security: "There must be material on which proportionately and reasonably [the Secretary of State] can conclude that there is a real possibility of activities harmful to national security but he does not have to be satisfied, nor on appeal show, that all the material before him is proved, and his conclusion is justified, to a "high civil degree of probability"."

Although Article 33(2) was not an issue in *Rehman*, these comments are relevant to the application of Article 33(2), with its reference to "...a refugee whom there are reasonable grounds for regarding as a danger to the security of the country..."

8.3.2. "Danger to the security of the country" and link to Article 1F(c)

There may be occasions where a person is regarded as a danger to national security because of acts which are contrary to the principles and purposes of the United Nations – that is, acts which bring that person within the scope of Article 1F(c). As noted above (see sub-section 5.5), there is no geographical limitation on the application of Article 1F(c), so this exclusion clause should also be applied in appropriate cases.

It is possible to refuse an asylum claim/seek to remove someone on the dual basis (i) that they are not, or can no longer be regarded as, a refugee (because Article 1F(c) applies), and (ii) that they also do not qualify for asylum/for protection against removal provided by Article 33(1) of the Refugee Convention (because Article 33(2) applies) by virtue of paragraph 334(iii) of the Immigration Rules.

8.3.3. A “particularly serious crime” and “constitutes a danger to the community of that country”

The approach to be taken to these two linked terms in Article 33(2) is set out in section 72 of the Nationality, Immigration and Asylum Act 2002 (a **guidance note** on the application of section 72 is attached at **Annex B**). Section 72(2) states:

“A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is -

- (a) convicted in the United Kingdom of an offence, and
- (b) sentenced to a period of imprisonment of at least two years.”

Section 72(4)(a) states:

“A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if –

- (a) *he is convicted of an offence specified by order of the Secretary of State....”*

Section 72 applies a presumption that an individual is a danger to the community of the United Kingdom even in cases where the crime was committed overseas.

As regards the first part of the presumption, it will be noted that what counts is not the maximum sentence that could have been imposed, nor the time a person actually spends in prison or another place of detention (such as a young offenders' institution or a hospital). The period which determines whether a person falls within the scope of Article 33(2) is the period of imprisonment to which they were actually sentenced, whether in the UK or overseas. Any element of the sentence which is suspended does not count towards the two years. Thus a person sentenced to one year's custodial sentence and two years suspended would not be subject to the presumption under subsection (2) or (3) [subsection (3) covers offences committed abroad – see paragraph 8.3.5]; whereas a person sentenced to three years' custodial sentence and one year suspended would fall within subsection (2) or (3).

Subsection (4) enables the Home Secretary to specify in an order offences in respect of which, regardless of the length of sentence imposed, there is a presumption that the offender is a danger to the community. An Order (the Immigration (Specification of Offences) Order 2004) was brought into force on 12 August 2004 and includes the following categories of offence: crimes of violence, sexual offences, crimes against children, drugs offences and terrorism offences. A copy of the order is at Annex A.

A person who is convicted of an offence and whose crime or sentence brings them under subsection (2), (3) or (4) is deemed to have committed a particularly serious crime and to be a danger to the community. However, section 72(6) does enable the presumption of danger to the community to be rebutted (but not the fact that the crime committed is a "particularly serious" one). Where a person seeks to argue that they are not a danger to the community, the burden will be on them (not on the Secretary of State) to show it. A successful rebuttal of this presumption, no matter how serious the offence committed, means that Article 33(2) will not apply.

Where the person to whom section 72 and Article 33(2) may apply is an asylum seeker, the asylum interview may provide an opportunity to hear from the applicant about their offence and obtain information relevant to the "danger to the community" issue. The presumption should be put to them and they should be asked for any evidence they wish to put forward to rebut it. The aim should be to obtain sufficient information to enable a final decision to be taken.

Where the person subject to section 72 and Article 33(2) consideration is a recognised refugee, caseworkers should normally write to the individual explaining the position in the light of Article 33(2) and seeking any comments they may have before a final decision is taken. This may also be appropriate where the person is an asylum seeker and the asylum interview has already been conducted. **Standard wordings are attached at Annex C.**

On receipt of representations the caseworker must consider whether there are any grounds for holding that the person is not a danger to the community. The assessment of the danger which the wrongdoer might pose to the community should be an assessment of the present or future danger, made on the basis of evidence of their past conduct and the likelihood of their repeating such conduct in the future. A decision not to apply Article 33(2), even though the presumption applies, should not be taken without reference to a senior caseworker. They may in turn contact APU if further advice is needed.

The nature of any representations may make it appropriate to seek further information before reaching a firm conclusion on whether or not Article 33(2) applies. Such information might be a transcript of the judge's comments at the trial, and in particular Police and/or Parole Board /Prison/Probation Service reports which provide an assessment of the person's character near the end of the period to be spent in custody. The value of up-to-date reports is that they should indicate to what extent, during the period of custody, the refugee has been able to address previous offending behaviour. Such reports might cover, for example, the refugee's participation in any offending behaviour programmes, and other rehabilitative measures undertaken since the crime was committed. Reports of this latter type will only be relevant insofar as they relate to the refugee's potential to re-offend and whether the refugee can be considered a danger to the community of the UK.

8.3.4. A "particularly serious crime" and Article 1F

It is possible that the "particularly serious crime" in question will fall within the scope of Article 1F. If such a case arises, those exclusion clauses should be relied on. The question whether Article 33(2) should also be relied upon in such cases should be addressed in the way described in sub-section 8.3.2 above.

8.3.5. A "particularly serious crime" committed abroad

In accordance with section 72(3) and (4) of the Nationality, Immigration and Asylum Act 2002, Article 33(2) will be of relevance when a (particularly serious) crime has been committed abroad by a refugee. For example, a person recognised as a refugee could leave the United Kingdom, commit the offence in question, and then return here. In such a case, Article 1F(b) would not apply as the person would have committed an offence after gaining their (first) entry to their country of refuge. However, Article 33(2) could apply because there is no requirement that the particularly serious crime be committed in the country of refuge, although there is still the additional requirement that the person pose a danger to the community of this country. Note that Article 33(2)/section 72 should not normally be relied on where a crime has been committed abroad before an individual arrives in the UK and seeks asylum and where that crime falls to be considered within the context of Article 1F(b).

Section 72(3) of the Nationality, Immigration and Asylum Act 2002 caters for the possibility of crimes committed abroad in the following way. It states:

"A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if -

- (a) he is convicted outside the United Kingdom of an offence,*
- (b) he is sentenced to imprisonment of at least two years, and*
- (c) he could have been sentenced to a period of imprisonment of at least two years had his conviction been a conviction in the United Kingdom of a similar offence."*

Where the conviction takes place abroad, there is a second situation in which the refugee will be deemed to have committed a particularly serious crime. Section 72(4) states:

"A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if -

- (a) he is convicted of an offence specified by order of the Secretary of State, or*
- (b) he is convicted outside the United Kingdom of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order under paragraph (a)."*

The same guidance (see sub-section 8.3.3.) on how to calculate the two years of imprisonment, and on rebutting the presumption about being a danger to the community, applies.

8.3.6. Detention in a hospital

Any case where a person is convicted of any serious crime and is detained not in a prison or young offenders institution but in a hospital should be referred for advice to Asylum Policy Unit, via a senior caseworker.

8.4.No "balancing" test

When considering whether Article 33(2) applies, caseworkers should not undertake any kind of balancing exercise, i.e. there should be no assessment of the extent to which a person's life or freedom would be threatened in the event of removal, followed by a weighing up of the gravity of the likely threat against the danger they pose to national security or to the community.

This is not to say that the fears of mistreatment which a person may face if returned to their country are not to be addressed at all. They will need to be addressed in the context of whether the person's removal would be a breach of the European Convention on Human Rights. See also section 10.

9. ARTICLE 32 OF THE REFUGEE CONVENTION

Article 32(1) of the Refugee Convention provides as follows:

"1. The Contracting State shall not expel a refugee lawfully in their territory save on grounds of national security or public order."

The effect of this provision is that a refugee who (i) is lawfully in the United Kingdom and (ii) is not a threat to national security or public order, cannot be removed from the United Kingdom under immigration powers to any country, whether or not their life or freedom would be threatened in that country.

This Article will not create an additional barrier to removal because if Article 33(2) applies then the exemption to the provisions of Article 32(1) – i.e.-national security or public order – will also be applicable.

10. EXCLUSION AND FAMILY MEMBERS/DEPENDANTS

If there are family members seeking to remain in the UK as dependants of an applicant whose claim for asylum is refused partly or wholly in reliance on Article 1F or 33(2), the applications from those family members fall to be refused.

However, some dependants may also apply for asylum in their own right and such claims should be considered on their merits. They cannot be excluded from the protection of the Refugee Convention simply because of the actions of the principal applicant. If the dependant's own asylum claim meets the requirements for inclusion under Article 1A and they are not excluded from protection they should be granted asylum. However, where a dependant has been excluded from the protection of the Refugee Convention as a result of their own actions, they should not be given leave in line with a principal applicant.

Situations might also arise where a person seeking to remain as the dependant of an asylum seeker or refugee appears to have committed a crime or act which, had they been seeking asylum in their own right, would make them a potential candidate for exclusion under Article 1F. In such a case, consideration should be given to whether the conditions of Article 1F or Article 33(2) are met. If they are met, the application to enter or remain as a dependant should be refused.

Where it is proposed to remove the principal applicant (who has been excluded) but to allow a dependant to stay (or where it is proposed to remove a dependant covered by the exclusion clauses but not to remove the principal applicant who is not excluded), consideration will need to be given to whether removal of the excluded person would be a breach of the ECHR Article 8 right to respect for family life.

Under Article 8(2) interference in an existing family life is permissible where it is “in accordance with the law”, pursues a legitimate aim (e.g. immigration control) and is proportionate. Where a crime has been committed it is likely that interference with family life will be proportionate. However, each case will be different, and must be treated on its merits.

Further advice on the consideration of Article 8 claims is contained in the *API on Article 8 of the ECHR (to be published shortly)* and also in the *API on European Convention on Human Rights*.

11. CASES WHERE ARTICLE 1F OR 33(2) APPLIES BUT REMOVAL IS NOT POSSIBLE

When applying Article 1F or 33(2) cases may arise where, despite a person’s being subject to Article 1F or 33(2), it is not possible to remove them at the time.

This situation is most likely to arise due to human rights considerations. These considerations must be addressed in a case involving an excluded person, just as in any other case. Article 3 of the ECHR is particularly important, in that it prevents removal of anyone if their removal would expose them to a real risk of torture or inhuman or degrading treatment or punishment. This applies irrespective of the crimes or acts that a person has committed or the danger they pose to the UK. In limited circumstances removal may breach Articles of the ECHR other than Article 3.

For more information on the application of the ECHR, see the **API on European Convention on Human Rights, and the APIs on Humanitarian Protection and Discretionary Leave**.

Every effort should be made, consistent with our international obligations, to find a way of removing a person to whom Article 1F or 33(2) applies, but where this is not possible, Discretionary Leave may be appropriate. See *the API on Discretionary Leave*. In such cases Ministers should normally be consulted prior to any proposed grant of leave. Where a person to whom Article 33(2) applies, but who cannot be removed for some reason, has indefinite leave, consideration should be given to revoking their leave under section 76(1) of the Nationality, Immigration and Asylum Act 2002 and granting 6months Discretionary Leave. Where a person to whom Article 33(2) applies, but who cannot be removed has limited leave, consideration should be given as to whether the leave should be varied under section 3(3)(a) of the 1971 Act.

12. APPEAL RIGHTS

Where an asylum claim is refused partly or wholly on the ground that Article 1F or Article 33(2) applies, the same appeal rights apply as in a case where the claim has been refused without any reliance on these exclusion grounds and an immigration decision has been taken under section 82 NIA or section 83 NIA applies. See *the API on Appeals - Rights of Appeal*.

However, where it is certified that either section 72 of the Nationality, Immigration Asylum Act 2002 or section 55 of the Immigration, Asylum and Nationality Act 2006 applies, the appellate authority will deal first with the Secretary of State's certificate (to the effect that the person has committed a particularly serious crime and constitutes a danger to the community or to the effect that the individual is excluded from the 1951 Convention by virtue of Article 1F). If the certificate is upheld, the appeal must be dismissed to the extent that it relies on asylum grounds, though any ECHR considerations raised in the appeal will still have to be taken into account.

In national security and certain other certified cases, a certificate may be issued under section 97 NIA. In that case the appeal right lies to the Special Immigration Appeals Commission.

STATUTORY INSTRUMENTS

2004 No.

IMMIGRATION

The Nationality, Immigration and Asylum Act 2002 (Specification of
Particularly Serious Crimes) Order 2004

Made - - - - - *20th July 2004*

Laid before Parliament *22nd July 2004*

Coming into force - - - - - *12th August 2004*

In exercise of the powers conferred upon him by section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002(1), the Secretary of State hereby makes the following Order:

1. This Order may be cited as the Nationality, Immigration and Asylum Act 2002 (Specification of Particularly Serious Crimes) Order 2004 and shall come into force on 12th August 2004.
2. An offence of a description set out in any of Schedules 1 to 6 to this Order is hereby specified for the purposes of section 72(4)(a) of the Nationality, Immigration and Asylum Act 2002.

Home Office
20th July 2004

Des Browne
Minister of State

(1) 2002 c. 41.

SCHEDULE 1

Statutory offences that apply throughout the United Kingdom

Offences under the Explosive Substances Act 1883⁽²⁾

- Section 2 (unlawfully and maliciously causing an explosion likely to endanger life or cause serious injury to property)
- Section 3(1)(a) (unlawfully and maliciously doing an act, intending or conspiring to cause an explosion likely to endanger life or cause serious injury to property)
- Section 3(1)(b) (unlawfully and maliciously making, possessing, or having under control, an explosive substance intending to endanger life or cause serious injury to property)
- Section 4 (making, or knowingly possessing, an explosive substance in circumstances that lead to reasonable suspicion that such making or possession is for an unlawful object)

Offences under the Misuse of Drugs Act 1971⁽³⁾

- Section 4(3)(a) (supplying or offering to supply a controlled drug, where the offence committed is in respect of a Class A drug or Class B drug controlled by the Misuse of Drugs Act 1971)
- Section 4(3)(b) (being concerned in the supply of a controlled drug, where the offence committed is in respect of a Class A drug or Class B drug controlled by the Misuse of Drugs Act 1971)
- Section 4(3)(c) (being concerned in the making of an offer to supply a controlled drug, where the offence committed is in respect of a Class A drug or Class B drug controlled by the Misuse of Drugs Act 1971)
- Section 5(3) (possessing a controlled drug intending to supply it to another, where the offence committed is in respect of a Class A drug or Class B drug controlled by the Misuse of Drugs Act 1971)
- Section 8(a) (occupying or managing premises where the production or attempted production of a controlled drug is knowingly permitted on those premises)
- Section 8(b) (occupying or managing premises where the supply, or attempted supply, of or the offer to supply a controlled drug is knowingly permitted on those premises)
- Section 9(a) (smoking or otherwise using opium)
- Section 9(b) (frequenting a place used for opium smoking)

⁽²⁾ 1883 46 and 47 Vict c. 3.
⁽³⁾ 1971 c. 38.

Section 9(c)(i) (possessing pipes or utensils for use in connection with opium smoking which have been used, permitted or intended for use, for that purpose)

Section 9(c)(ii) (possessing utensils for use in connection with preparing opium for smoking which have been used, permitted or intended for use for that purpose)

Section 20 (assisting or inducing, while in the United Kingdom, the commission of an offence under a corresponding law outside the United Kingdom)

Offences under the Immigration Act 1971(4)

Section 25(1)(a) (facilitating the breach of immigration law by a person who is not a citizen of the European Union)(5)

Section 25A (facilitating, for gain, the arrival in the United Kingdom of an asylum seeker)(6)

Section 25B (facilitating a breach of a deportation or exclusion order in force against a citizen of the European Union)(7)

Offences under the Biological Weapons Act 1974(8)

Section 1(1)(a) (developing, producing, stockpiling, acquiring or retaining a biological agent or toxin in a quantity that has no justification for peaceful purposes)

Section 1(1)(b) (developing, producing, stockpiling, acquiring or retaining a weapon, equipment or means of delivery designed to use a biological agent or toxin for hostile purposes or in an armed conflict)

Section 1(1A)(a) (transferring a biological agent or toxin for non-peaceful purposes or entering into an agreement to do so)(9)

Section 1(1A)(b) (making arrangements for the transfer of a biological agent or toxin for non-peaceful purposes or entering into an agreement to do so)

Offences under the Customs and Excise Act 1979(10)

Section 50(3) (importing or being concerned in importing goods contrary to any prohibition or restriction, intending to evade that prohibition or restriction, where the offence committed is in respect of a Class A drug or Class B drug controlled by the Misuse of Drugs Act 1971)

(4) 1971 c. 77.

(5) Section 25(1)(a) was substituted by section 143 of the Nationality, Immigration and Asylum Act 2002.

(6) Section 25A was substituted by section 143 of the Nationality, Immigration and Asylum Act 2002.

(7) Section 25B was substituted by section 143 of the Nationality, Immigration and Asylum Act 2002.

(8) 1974 c. 6.

(9) Section 1(1A) was inserted by section 44 of the Anti-terrorism, Crime and Security Act 2001 (c. 24).

(10) 1979 c. 2.

Section 68(1) (exporting or shipping as stores, or bringing to the United Kingdom for the purpose of exporting or shipping as stores, goods contrary to any prohibition or restriction, where the offence committed is in respect of a Class A drug or Class B drug controlled by the Misuse of Drugs Act 1971)

Section 68(2) (knowingly being concerned in exporting, or shipping as stores, any goods, intending to evade a prohibition or restriction, where the offence committed is in respect of a Class A or Class B drug controlled by the Misuse of Drugs Act 1971)

Section 170(2)(b) (knowingly being concerned in the fraudulent evasion of any prohibition or restriction in relation to goods, where the offence committed is in respect of a Class A or Class B drug controlled by the Misuse of Drugs Act 1971)

Offences under the Taking of Hostages Act 1982(11)

Section 1(1) (detaining a person and threatening to kill, injure or continue to detain that person in order to compel a State, international governmental organisation or person to do, or abstain from doing, any act)

Offences under the Aviation Security Act 1982(12)

Section 1(1) (unlawfully seizing, or exercising control of, an aircraft by using force or threats)

Section 2(1)(a) (unlawfully and intentionally destroying an aircraft in service or damaging such an aircraft so as to render it incapable of flight or endanger its safety in flight)

Section 2(1)(b) (unlawfully and intentionally committing an act of violence on board an aircraft in flight likely to endanger its safety)

Section 3(1) (unlawfully and intentionally destroying, damaging or interfering with any property used for the provision of air navigation facilities where such destruction, damage or interference is likely to endanger the safety of aircraft in flight)

Section 3(3) (intentionally communicating materially false, misleading or deceptive information which endangers, or is likely to endanger, the safety of an aircraft in flight)

Section 4(1)(a) (possessing, without lawful authority or reasonable excuse, a firearm or explosive, or article having the appearance of either, or any article made or adapted for injuring a person or destroying or damaging property, in any aircraft registered in the United Kingdom)

(11) 1982 c. 28.
(12) 1982 c. 36.

Section 4(1)(b) (possessing, without lawful authority or reasonable excuse, a firearm, explosive or article having the appearance of either or any article made or adapted for injuring a person or destroying or damaging property in any aircraft not registered in the United Kingdom when it is in, or flying over, the United Kingdom)

Section 4(1)(c) (possessing, without lawful authority or reasonable excuse, a firearm, explosive or article having the appearance of either or any article made or adapted for injuring a person or destroying or damaging property in an aerodrome in the United Kingdom)

Section 4(1)(d) (possessing, without lawful authority or reasonable excuse, a firearm, explosive or article having the appearance of either or any article made or adapted for injuring a person or destroying or damaging property in any air navigation installation in the United Kingdom)

*Offences under the Nuclear Materials (Offences) Act 1983***(13)**

Section 2(2)(a) (receiving, holding or dealing with nuclear material intending to do an act which is an offence referred to in section 1(1)(a) or (b) of the Nuclear Materials (Offences) Act 1983)

Section 2(2)(b) (receiving, holding or dealing with nuclear material being reckless as to whether another would do an act which is an offence referred to in section 1(1)(a) or (b) of the Nuclear Materials (Offences) Act 1983)

Section 2(3) (making a threat to do an act by means of nuclear material which is an offence referred to in section 1(1)(a) or (b) of the Nuclear Materials (Offences) Act 1983, intending that the person to whom the threat is made shall fear that it will be carried out)

Section 2(4) (threatening to obtain nuclear material by an act which is an offence referred to in section 1(1)(c) of the Nuclear Materials (Offences) Act 1983 in order to compel a state, international governmental organisation or person to do, or abstain from doing, an act)

*Offences under the Criminal Justice Act 1988***(14)**

Section 134(1) (intentionally inflicting severe pain or suffering on another, where the offender is a public official or person acting in an official capacity who does such acts in performance, or purported performance, of his official duties)

Section 134(2) (intentionally inflicting severe pain or suffering on another at the instigation, consent or acquiescence of a public official or person acting in an official capacity who at the time of such instigation, consent or acquiescence is acting in performance, or purported performance, of his official duties)

*Offences under the Criminal Justice (International Co-operation) Act 1990***(15)**

(13) 1983 c. 18.
(14) 1988 c. 33.
(15) 1990 c. 5.

Section 12(1) (manufacturing or supplying a scheduled substance, knowing or suspecting that the substance is to be used for the unlawful production of a controlled drug)

*Offences under the Aviation and Maritime Security Act 1990***(16)**

Section 1(1) (intentionally committing an act of violence at an aerodrome serving international civil aviation with any device, substance or weapon which causes, or is likely to cause, serious personal injury or death and endangers the safe operation of that aerodrome or the safety of persons there)

Section 1(2)(a)(i) (unlawfully and intentionally destroying or seriously damaging property used for the provision of any facilities at an aerodrome serving international civil aviation with any device, substance or weapon in a way that endangers, or is likely to endanger, the safe operation of that aerodrome or the safety of persons there)

Section 1(2)(a)(ii) (unlawfully and intentionally destroying or seriously damaging an out of service aircraft at an aerodrome serving international civil aviation with any device, substance or weapon in a way that endangers, or is likely to endanger, the safe operation of that aerodrome or the safety of persons there)

Section 1(2)(b) (unlawfully and intentionally disrupting the services of an aerodrome serving international civil aviation with any device, substance or weapon in a way that endangers, or is likely to endanger, the safe operation of that aerodrome or the safety of persons there)

Section 9 (unlawfully seizing, or exercising of control, of a ship by force or with threats)

Section 13(1) (threatening to do an act to a ship or fixed platform which is an offence under section 11(1) of the Aviation and Maritime Security Act 1990)

Section 13(2) (threatening to do an act which is an offence under section 12(1) Aviation and Maritime Security Act 1990)

*Offences under the Channel Tunnel (Security) Order 1994***(17)**

Article 4(1) (unlawfully seizing, or exercising control, of a Channel Tunnel train by using force or threats)

Article 5(1) (unlawfully seizing, or exercising control, of the tunnel system by using force or threats)

Article 6(1)(a) (unlawfully and intentionally destroying a Channel Tunnel train or the tunnel system or any goods on a train or within the tunnel system so as to endanger, or to be likely to endanger, the safe operation of the train or the safety of the tunnel system)

(16) 1990, c. 31.
(17) S.I. 1994/570.

Article 6(1)(b) (unlawfully and intentionally damaging a Channel Tunnel train or the tunnel system or any goods on a train or within the tunnel system so as to endanger, or to be likely to endanger, the safe operation of the train or the safety of the tunnel system)

Article 6(1)(c) (committing an act of violence on board a Channel Tunnel train or within the tunnel system likely to endanger the safe operation of the train or the safety of the tunnel system)

Article 6(2)(a) (unlawfully and intentionally placing a device or substance on a Channel Tunnel train likely to destroy or damage it, or goods on it, so as to endanger its safe operation)

Article 6(2)(b) (unlawfully and intentionally placing a device or substance in the tunnel system likely to destroy or damage it so as to endanger its safety)

Article 7(1) (unlawfully and intentionally destroying, damaging, or interfering with, the operation of property referred to in Article 7(2) of the Channel Tunnel (Security) Order 1994 likely to endanger the safe operation of any Channel Tunnel train or the safety of the tunnel system)

Article 7(3) (intentionally communicating information, knowing it to be false in a material particular, which endangers the safe operation of any Channel Tunnel train or the safety of the tunnel system)

Article 8(1) (threatening to commit an offence under Article 6(1) of the Channel Tunnel (Security) Order 1994 in order to compel a person to do, or abstain from doing, any act, where the making of such a threat is likely to endanger the safe operation of a train or the safety of the tunnel system)

Article 8(2) (threatening to commit an offence under Article 7(1) of the Channel Tunnel (Security) Order 1994 in order to compel a person to do, or abstain from doing, any act, where the making of such a threat is likely to endanger the safe operation of a train or the safety of the tunnel system)

Offences under the Chemical Weapons Act 1996(18)

Section 2(1)(a) (using a chemical weapon)

Section 2(1)(b) (developing or producing a chemical weapon)

Section 2(1)(c) (possessing a chemical weapon)

Section 2(1)(d) (participating in the transfer of a chemical weapon)

Section 2(1)(e) (engaging in military preparations, intending to use a chemical weapon)

Section 11(1)(a) (constructing premises, intending them to be used for producing a chemical weapon)

- Section 11(1)(b) (altering premises, intending them to be used for producing a chemical weapon)
- Section 11(1)(c) (installing or constructing equipment, intending it to be used for producing a chemical weapon)
- Section 11(1)(d) (altering equipment, intending it to be used for producing a chemical weapon)
- Section 11(1)(e) (occupying land and permitting construction of premises on it, intending those premises to be used for producing a chemical weapon)
- Section 11(1)(f) (occupying land and permitting premises to be altered on it, intending those premises to be used for producing a chemical weapon)
- Section 11(1)(g) (occupying land and permitting installation or construction on it of equipment, intending that equipment to be used for producing a chemical weapon)
- Section 11(1)(h) (occupying land and permitting equipment to be altered on it, intending that equipment to be used for producing a chemical weapon)
- Offences under the Terrorism Act 2000(19)
- Section 11(1) (belonging, or professing to belong, to a proscribed organisation)
- Section 12(1) (inviting support for a proscribed organisation that is not restricted to the provision of money or property)
- Section 12(2)(a) (arranging, managing or assisting in the arrangement or management of a meeting, knowing that it supports a proscribed organisation)
- Section 12(2)(b) (arranging, managing or assisting in the arrangement or management of a meeting, knowing that it furthers the activities of a proscribed organisation)
- Section 12(2)(c) (arranging, managing or assisting in the arrangement or management of a meeting, knowing that it is to be addressed by a member or professed member of a proscribed organisation)
- Section 12(3) (addressing a meeting for the purpose of encouraging support or furthering the activities of a proscribed organisation)
- Section 15(1) (inviting another to provide money or property, intending, or having reasonable cause to suspect, that it may be used for terrorist purposes)
- Section 15(2) (receiving money or property, intending, or having reasonable cause to suspect, that it may be used for terrorist purposes)
- Section 15(3) (providing money or property, intending, or having reasonable cause to suspect, that it may be used for terrorist purposes)
- Section 16(1) (using money or property for terrorist purposes)

(19) 2000 c. 11.

- Section 16(2) (possessing money or property, intending, or having reasonable cause to suspect, that it may be used for terrorist purposes)
- Section 17(1) (entering into, or becoming concerned in, an arrangement where money or other property is made available knowing, or having reasonable cause to suspect, that it may be used for terrorist purposes)
- Section 18(1)(a) (entering into, or becoming concerned in, an arrangement facilitating the retention or control of terrorist property by concealment)
- Section 18(1)(b) (entering into, or becoming concerned in, an arrangement facilitating the retention or control of terrorist property by removal from the jurisdiction)
- Section 18(1)(c) (entering into, or becoming concerned in, an arrangement facilitating the retention or control of terrorist property by transfer to nominees)
- Section 18(1)(d) (entering into, or becoming concerned in, an arrangement facilitating the retention or control of terrorist property in any other way)
- Section 19(2) (not disclosing as soon as reasonably practicable a belief or suspicion, and the information on which the belief or suspicion is based, that an offence has been committed under sections 15 to 18 of the Terrorism Act 2000)
- Section 38B(1)(a) (not disclosing information, knowing or believing it to be of material assistance in preventing an act of terrorism)(**20**)
- Section 38B(1)(b) (not disclosing information, knowing or believing it to be of material assistance in securing the apprehension, prosecution or conviction of a person for a terrorist offence)
- Section 54(1)(a) (providing instruction or training in the making or use of firearms)
- Section 54(1)(aa) (providing instruction or training in the making or use of radioactive materials or weapons designed or adapted to discharge them)(**21**)
- Section 54(1)(b) (providing instruction or training in the making or use of explosives)
- Section 54(1)(c) (providing instruction or training in the making or use of chemical, biological or nuclear weapons)
- Section 54(2)(a) (receiving instruction or training in the making or use of radioactive materials or weapons designed or adapted to discharge them)
- Section 54(2)(aa) (receiving instruction or training in the making or use of radioactive materials or weapons designed or adapted to discharge them)(**22**)

(20) Section 38B was inserted by section 117(1) and (2) of the Anti-terrorism, Crime and Security Act 2001 (c.24).
(21) Section 54(1)(aa) was inserted by section 120(1) of the Anti-terrorism, Crime and Security Act 2001.
(22) Section 54(2)(aa) was inserted by section 120(1) of the Anti-terrorism, Crime and Security Act 2001.

Section 54(2)(b) (receiving instruction or training in the making or use of explosives)

Section 54(2)(c) (receiving instruction or training in the making or use of chemical, biological or nuclear weapons)

Section 54(3)(a) (inviting another to receive instruction or training where receipt would constitute an offence under section 54(2) of the Terrorism Act 2000)

Section 54(3)(b) (inviting another to receive instruction or training where receipt would constitute an offence under section 54(2) of the Terrorism Act 2000 but for the fact that it would take place outside the United Kingdom)

Section 56(1) (directing the activities of an organisation at any level which is concerned in the commission of a terrorist act)

Section 57(1) Terrorism Act 2000 (possessing an article giving rise to a reasonable suspicion that possessing it is connected with the commission, preparation or instigation of a terrorist act)

Section 58(1)(a) (collecting or making a record of information of a kind likely to be useful to a person committing or preparing a terrorist act)

Section 58(1)(b) (possessing a record of information of a kind likely to be useful to a person committing or preparing a terrorist act)

Offences under the Anti-terrorism, Crime and Security Act 2001 (23)

Section 47(1)(a) (knowingly causing a nuclear weapon explosion)

Section 47(1)(b) (developing or producing a nuclear weapon, or participating in either activity)

Section 47(1)(c) (possessing a nuclear weapon)

Section 47(1)(d) (participating in the transfer of a nuclear weapon)

Section 47(1)(e) (engaging in military preparations intending, or threatening, to use a nuclear weapon)

Section 113(1) (using a noxious substance or thing in a way which causes serious violence or serious damage to property, endangers human life, creates a serious risk to health or safety or induces in the public a fear that such an act will endanger their lives or health or safety, and which is designed to influence the government or intimidate the public)

Section 114(1) (placing or sending a substance or thing, intending to induce a belief that it is a noxious substance or thing likely to endanger human life or create a serious risk to human health)

Section 114(2) (communicating information knowing or believing it to be false, intending to induce a belief that a noxious substance or thing is present in any place, thereby to endanger human life or create a serious risk to human health)

Offences under the Proceeds of Crime Act 2002(24)

Section 327(1)(a) (concealing criminal property)

Section 327(1)(b) (disguising criminal property)

Section 327(1)(c) (converting criminal property)

Section 327(1)(d) (transferring criminal property)

Section 327(1)(e) (removing criminal property from England and Wales, Scotland or Northern Ireland)

Section 328(1) (entering into, or becoming concerned in, an arrangement, knowing or suspecting that it will facilitate the acquisition, retention, use, or control of criminal property)

Section 329(1)(a) (acquiring criminal property)

Section 329(1)(b) (using criminal property)

Section 329(1)(c) (possessing criminal property)

Section 332(1) (failing, as a nominated person, to disclose known or suspected money laundering as soon as reasonably practicable after the information on which that knowledge or suspicion is based is obtained in consequence of a disclosure under section 337 or 338 of the Proceeds of Crime Act 2002)

Section 333 (disclosing information likely to prejudice any investigation that might be conducted following the disclosure of information by a nominated person under section 337 or 338 of the Proceeds of Crime Act 2002)

(24) 2002 c. 29.

SCHEDULE 2

Offences under the Common Law of England and Wales and statutory offences that apply only in England and Wales

1. Offences under the Common Law of England and Wales

Manslaughter

2. Statutory offences that apply only in England and Wales

Offences under the Infant Life (Preservation) Act 1929 (25)

Section 1 (doing a wilful act, intending to destroy the life of a child capable of being born alive that causes a child to die before it is born)

Offences under the Infanticide Act 1938 (26)

Section 1 (doing a wilful act causing the death of a child before it is over 12 months old, where that act is done by the mother of the child and her balance of mind is disturbed for reasons relating to lactation or the birth of the child)

Offences under the Theft Act 1968(27)

Section 1(1) (dishonestly appropriating another's property, intending to permanently deprive him of it)

Section 8(1) (stealing, and before or at the time of doing so, using force or putting another in fear of being there and then subjected to force)

Section 9(1)(a) (entering a building as a trespasser, intending to steal, inflict or attempt to inflict grievous bodily harm or rape)

Section 9(1)(b) (having entered a building as a trespasser, stealing or attempting to steal or inflicting or attempting to inflict grievous bodily harm)

Section 10(1) (committing burglary with a firearm, imitation firearm, weapon of offence or explosive)

Section 12A (aggravated taking of a vehicle)(28)

Offences under the Criminal Damage Act 1971(29)

Section 1(1) (destroying or damaging, without lawful excuse, another's property intending to destroy or damage it or being reckless as to that)

(25) 1929 19 & 20 Geo 5 c. 34.

(26) 1938 1 & 2 Geo 6 c. 36.

(27) 1968 c. 60.

(28) Section 12A was inserted by section 2(1) of the Aggravated Vehicle-Taking Act 1992 (c. 11).

(29) 1971 c. 48.

Section 1(2) (destroying or damaging, without lawful excuse, property, intending, or being reckless as to whether, that destruction or damage would result and intending that damage or destruction to endanger the life of another or being reckless as to that)

Section 2 (threatening, without lawful excuse, to destroy or damage property, knowing that such a threat is likely to endanger another's life)

Section 3(a) (having in custody or under control anything intending, without lawful excuse, to use, or permit use of, it to destroy or damage another's property)

Section 3(b) (having in custody or under control anything, intending, without lawful excuse, to use, or permit use of, it to destroy or damage property knowing that such an act is likely to endanger another's life)

*Offences under the Criminal Law Act 1977***(30)**

Section 1 (agreeing to pursue a course of conduct which, if carried out as intended, necessarily amounts to the commission of an offence or would do so but for the fact that such commission is impossible, provided that the offence in question is an offence described either in Schedule 1 to this Order or this Schedule)

Section 51(1) (placing or dispatching an article, intending to induce a belief that it will explode or ignite and cause personal injury or property damage)

Section 51(2) (communicating information, knowing or believing it to be false intending to induce a belief that a bomb or other thing is liable to explode in a place)

*Offences under the Magistrates Courts Act 1980***(31)**

Section 44 (aiding, abetting, counselling or procuring the commission of a summary offence, provided that the offence in question is described in Schedule 1 to this Order or this Schedule)**(32)**

*Offences under the Criminal Attempts Act 1981***(33)**

Section 1(1) (intending to commit an offence and doing an act that is more than merely preparatory to the commission of that offence, provided that the offence in question is described in Schedule 1 to this Order or this Schedule)

*Offences under the Public Order Act 1986***(34)**

Section 1(1) (being in a group of 12 or more people who use, or threaten, unlawful violence for a common purpose so as to cause a person of reasonable firmness present at the scene to fear for his safety)

(30) 1977 c. 45.

(31) 1980 c. 43.

(32) Section 8 was amended by section 65(4) of the Criminal Law Act 1977 (c. 45)

(g) 1981 c. 47.

(34) 1986 c. 64.

Section 2(1) (being in a group of 3 or more people who use, or threaten, unlawful violence for a common purpose so as to cause a person of reasonable firmness present at the scene to fear for his safety)

Section 3(1) (using, or threatening, unlawful violence so as to cause a person of reasonable firmness present at the scene to fear for his safety)

Offences under the Protection from Harassment Act 1997(35)

Section 4(1) (causing fear in another on at least two occasions that violence will be used against him, where the offender knows, or ought to know, that his course of conduct will cause such fear on each occasion)

Offences under the Crime and Disorder Act 1998(36)

Section 29(1)(a) (maliciously wounding or causing grievous bodily harm so as to constitute an offence under section 20 of the Offences Against the Person Act 1861(37) that is racially or religiously aggravated)

Section 29(1)(b) (causing actual bodily harm so as to constitute an offence under section 47 of the Offences Against the Person Act 1861 that is racially or religiously aggravated)

Section 29(1)(c) (committing a common assault that is racially or religiously aggravated)

Section 31(1)(a) (committing an offence under section 4(1) of the Public Order Act 1986 that is racially or religiously aggravated)

Section 31(1)(b) (committing an offence under section 4A(1) of the Public Order Act 1986(38) that is racially or religiously aggravated)

Offences under the Sexual Offences Act 2003(39)

Section 1(1) (intentionally penetrating the vagina, anus or mouth of another with a penis, where the victim does not consent and the offender does not reasonably believe that there is consent)

Section 2(1) (intentionally sexually penetrating the vagina or anus of another with a part of the body or anything else, where the victim does not consent and the offender does not reasonably believe that there is consent)

Section 3(1) (intentionally sexually touching another, where the victim does not consent and the offender does not reasonably believe that there is consent)

Section 4(1) (intentionally causing another to engage in sexual activity, where the victim does not consent and the offender does not reasonably believe that there is consent)

(35) 1997 c. 40.

(36) 1998 c. 37.

(37) 1861 24 & 25 Vict c. 100.

(38) Section 4A(1) was inserted by section 154 of the Criminal Justice and Public Order Act 1994 (c. 31).

(39) 2003 c.42.

Section 5(1) (intentionally sexually penetrating the vagina, anus or mouth of another with a penis, where the victim under 13)

Section 6(1) (intentionally sexually penetrating the vagina or anus of another who is under 13 with a part of the body or anything else)

Section 7(1) (intentionally sexually touching a person who is under 13)

Section 8(1) (intentionally causing or inciting another who is under 13 to engage in sexual activity)

Section 9(1) (intentionally sexually touching another who is 13 or under, or is 16 or under and the offender, who is 18 or over, does not believe that the victim is 16 or over)

Section 10(1) (intentionally causing or inciting another to engage in sexual activity, where the victim is 13 or under, or is 16 or under and the offender, who is 18 or over, does not believe that the victim is 16 or over)

Section 11(1) (intentionally engaging, for the purpose of sexual gratification, in sexual activity in a place where another is present or can observe and the offender, who is 18 or over, knows, believes or intends the victim to be there and the victim is 13 or under, or is under 16 and the offender does not reasonably believe that the victim is 16 or over)

Section 12(1) (intentionally causing, for the purpose of sexual gratification, another to watch or look at an image of a third person engaging in sexual activity, where the victim is 13 or under, or is under 16 and the offender does not reasonably believe that the victim is 16 or over)

Section 13(1) (committing an offence under section 9 to 12 of the Sexual Offences Act 2003 which would be an offence if the offender was 18)

Section 14(1) (intentionally arranging or facilitating something in any part of the world that, if done, would involve the commission of any offence under sections 9 to 13 of the Sexual Offences Act 2003)

Section 25 (intentionally sexually touching a family member, where the offender could reasonably be expected to know that the victim is a family member, and the victim is 13, or is under 18 and the offender does not reasonably believe that the victim is 18 or over)

Section 26 (intentionally inciting a family member to touch or allow himself to be touched sexually where the offender could reasonably be expected to know that the victim is a family member, and the victim is 13 or under, or is under 18 and the offender does not reasonably believe that the victim is 18 or over)

Section 30(1) (intentionally sexually touching another where the victim is unable to refuse by reason of a mental disorder and the offender could reasonably be expected to know that the victim has a mental disorder that is likely to render him unable to refuse)

Section 31(1) (intentionally inciting another to engage in sexual activity where the victim is unable to refuse by reason of a mental disorder and the offender could reasonably be expected to know that the victim has a mental disorder that is likely to render him unable to refuse)

Section 32(1) (intentionally engaging in sexual activity for sexual gratification in a place where a person who is unable to refuse by reason of a mental disorder observes it or the offender knows, believes or intends the victim to observe it and the offender knows or could reasonably be expected to know that the victim has a mental disorder that is likely to render him unable to refuse)

Section 33(1) (intentionally causing, for sexual gratification, another to watch, or look at an image of, a third person engaging in sexual activity, where the victim is unable to refuse by reason of mental disorder and the offender knows or could reasonably be expected to know that the victim has a mental disorder that is likely to render him unable to refuse)

Section 34(1) (intentionally sexually touching another with a mental disorder, where the victim agrees and such agreement is obtained by inducement, threat, or deception and the offender knows, or could reasonably be expected to know, about that mental disorder)

Section 35(1) (intentionally causing another with a mental disorder, by inducement, threat, or deception, to engage in sexual activity and the victim has a mental disorder which the offender knows, or could reasonably be expected to know, about)

Section 36(1) (intentionally engaging in sexual activity, for the purpose of sexual gratification, in a place where another with a mental disorder is present or observes it, or the offender knows, believes or intends the victim to observe it, because of inducement, threat or deception and the offender knows, or could reasonably be expected to know, that the victim has a mental disorder)

Section 37(1) (intentionally causing another with a mental disorder, by inducement, threat or deception, to watch or look, for the purposes of sexual gratification, at an image of a third person engaging in sexual activity, and the offender knows, or could reasonably be expected to know, that the victim has a mental disorder)

Section 38(1) (intentionally sexually touching another with a mental disorder which the offender knows, or could reasonably be expected to know, about, where the offender is involved in the victim's care)

Section 39(1) (intentionally causing or inciting another with a mental disorder to engage in sexual activity, where the offender knows or could reasonably be expected to know that the victim has a mental disorder and the offender is involved in the victim's care)

Section 61(1) (intentionally administering a substance to another knowing that the victim does not consent, with the intention of stupefying or overpowering the victim so that sexual activity can be engaged in with the victim)

Section 62(1) (committing an offence intending to commit a sexual offence under Part I of the Sexual Offences Act 2003)

Section 63(1) (trespassing on premises, knowing that, or being reckless as to whether, trespass is taking place and intending to commit a sexual offence under Part I of the Sexual Offences Act 2003)

SCHEDULE 3

Offences under the Common Law of Scotland and statutory offences that apply only in Scotland

1. Offences under the Common Law of Scotland

Abduction

Abduction of women or girls with intent to rape

Aiding and abetting an offence under the Common Law of Scotland (provided that the offence in question is described in this paragraph of this Schedule)

Assault with intent to rape or ravish

Assault and robbery

Attempted murder

Breach of the peace inferring personal violence

Clandestine injury to women

Conspiracy (in respect of an offence described in Schedule 1 to this Order or this Schedule)

Culpable homicide

Culpable and reckless fire-raising

Indecent assault

Malicious mischief

Mobbing and rioting

Rape

Robbery

Theft by housebreaking

Threatening personal violence

Wilful fire-raising

Wrongful imprisonment

2. Statutory offences that apply only in Scotland

Offences under the Children and Young Persons (Scotland) Act 1937

Section 12 (ill-treating, neglecting, abandoning or exposing a child under 16, or causing such, where the offender is 16 and has parental responsibility for the victim or has charge or care of him)

Offences under the Civic Government (Scotland) Act 1982(40)

Section 52 (taking and distributing indecent images of children)(41)

Section 52A (possessing indecent images of children)(42)

Offences under the Prohibition of Female Circumcision Act 1985(43)

Section 1(1)(a) (excising, infibulating or otherwise mutilating the labia or clitoris of another)

Offences under the Criminal Law (Consolidation) (Scotland) Act 1995(44)

Section 3(1) (having sexual intercourse with a member of the same household who is 16 or under where the offender is in a position of trust)

Section 5(1) (having sexual intercourse with a girl under 13)

Section 6 (engaging in lewd, indecent or libidinous behaviour towards a girl between 12 and 16, where that behaviour would have constituted a common law offence had that girl been under 12)(45)

Section 50A(1)(a) (pursuing a racially aggravated course of conduct amounting to harassment that is intended to harass or which occurs in circumstances where it would appear to a reasonable person to constitute harassment)(46)

Section 50A(1)(b) (acting in a racially aggravated manner which causes, or is intended to cause, alarm or distress)

Section 52(1) (wilfully or recklessly destroying or damaging property)

Offences under the Criminal Procedure (Scotland) Act 1995(47)

Section 293(2) (aiding, abetting, counselling, procuring or inciting the commission of an offence against the provisions of any enactment, provided that the offence in question is described in Schedule 1 to this Order or in this paragraph of this Schedule)

Section 294 (attempting to commit an indictable offence, provided that the offence in question is described in Schedule 1 to this Order or this Schedule)

(40) 1952, c.82.

(41) Section 52 was amended by 84(6) of the Criminal Justice and Public Order Act 1994 (c. 33), paragraph 44(3) of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40) and section 19 of the Criminal Justice (Scotland) Act 2003 (asp 7).

(42) Section 52A was inserted by section 161(c) of the Criminal Justice Act 1988 (c. 33) and amended by section 84(7) of the Criminal Justice and Public Order Act 1994 (c. 33) and section 19 of the Criminal Justice (Scotland) Act 2003 (2003 asp 7).

(43) 1985 c. 38.

(44) 1995 c. 39.

(45) Section 6 was substituted by section 14(2) of the Crime and Punishment (Scotland) Act 1997 (c. 48).

(46) Section 50A was inserted by section 33 of the Crime and Disorder Act 1998 (c. 37).

(47) 1995 c. 46.

Offences under the Sexual Offences (Amendment) Act 2000(48)

Section 3 (having sexual intercourse, or engaging in other sexual activity with, a person under 18, where the offender is 18 or over and is in a position of trust)

Offences under the International Criminal Court (Scotland) Act 2001(49)

Section 1 (committing genocide, a crime against humanity or a war crime)

Offences under the Criminal Justice (Scotland) Act 2003(50)

Section 22(1)(a)(i) (arranging or facilitating the arrival or travel in the United Kingdom of a person and intending to exercise control over prostitution of the victim or involving the victim in the production of obscene or indecent material)

Section 22(1)(a)(ii) (arranging or facilitating the arrival or travel in the United Kingdom of a person and believing that another will exercise control over prostitution of the victim or involving the victim in the production of obscene or indecent material)

Section 22(1)(b)(i) (arranging or facilitating the departure from the United Kingdom of a person and intending to exercise control over prostitution of the victim or involving the victim in the production of obscene or indecent material)

Section 22(1)(b)(ii) (arranging or facilitating the departure from the United Kingdom of a person and believing that another will exercise control over prostitution of the victim or involving the victim in the production of obscene or indecent material)

(48) 2000 c. 44.
(49) 2001 asp 13.
(50) 2003 asp 7.

SCHEDULE 4

Offences under the Common Law of Northern Ireland and statutory offences that apply only in Northern Ireland

1. Offences under the Common Law of Northern Ireland

Affray

Rape

Rioting

2. Statutory offences that apply only in Northern Ireland

Offences under the Offences Against the Person Act 1861(51)

Section 52 (indecently assaulting a woman or a girl under 16)

Section 53 (abducting a woman by force, intending to have sexual intercourse with her)

Offences under the Criminal Law (Amendment) Act 1885(52)

Section 4 (having unlawful sexual intercourse with a girl under 13)

Section 5 (having unlawful sexual intercourse with a girl under 16)

Offences under the Infanticide Act (Northern Ireland) 1939(53)

Section 1(1) (doing a wilful act causing the death of a child before it is over 12 months old, where that act is done by the mother of the child and her balance of mind is disturbed for reasons relating to lactation or the birth of the child)

Offences under the Criminal Justice Act (Northern Ireland) 1945(54)

Section 25(1) (doing a wilful act, intending to destroy the life of a child capable of being born alive that causes the child to die before it is born)

Offences under the Attempted Rape Act (Northern Ireland) 1960(55)

(51) 1861 24 & 25 Vict c. 100.
(52) 1885 Ch. 69.
(53) 1939 c. 5 (NI).
(54) 1945 c. 15 (NI).
(55) 1960 c. 60 (NI).

Section 2 (committing assault intending to commit rape)(56)

Offences under the Children and Young Persons Act (Northern Ireland) 1968(57)

Section 20(1) (wilfully assaulting, ill-treating, neglecting, abandoning or exposing, or causing such, of a child of 16 where the offender has responsibility for the victim, in a manner likely to cause the victim unnecessary suffering or injury to health)

Section 22 (committing an act of gross indecency with or towards a child or inciting a child to perform such an act)

Offences under the Theft Act (Northern Ireland) 1969(58)

Section 1(1) (dishonestly appropriating another's property, intending to permanently deprive him of it)

Section 8(1) (stealing, and before or at the time of doing so, using force or putting another in fear of being there and then subjected to force)

Section 9(1)(a) (entering a building as a trespasser, intending to steal, inflict or attempt to inflict grievous bodily harm or rape)

Section 9(1)(b) (having entered a building as a trespasser, stealing or attempting to steal or inflicting or attempting to inflict grievous bodily harm)

Section 10(1) (committing burglary with a firearm or imitation firearm, a weapon of offence or an explosive)

Offences under the Protection of the Person and Property Act (Northern Ireland) 1969(59)

Section 3 (throwing, placing, attaching or using a petrol bomb, intending to destroy, or damage, the property of another, or to cause personal injury to another, or to give another reasonable cause to fear any destruction of property or personal injury or being reckless in regard to causing any such destruction, damage, injury or fear)

Offences under the Criminal Damage (Northern Ireland) Order 1977(60)

Article 3(1) (destroying or damaging, without lawful excuse, another's property, intending to destroy or damage it or being reckless as to that)

Article 3(2) (destroying or damaging, without lawful excuse, property, intending, or being reckless as to whether, that destruction or damage would result and intending that damage or destruction to endanger the life of another or being reckless as to that)

Article 4 (threatening, without lawful excuse, to destroy or damage property, knowing that such a threat is likely to endanger another's life)

(56) Section 2 was amended by article 12(3) of the Treatment of Offenders (Northern Ireland) Order 1989 (1989 NI 15) and paragraph 4 of Schedule 1 to the Criminal Justice (Northern Ireland) Order 2003 (2003 NI 13).

(57) 1968 c. 34 (NI).

(58) 1969 c. 16 (NI).

(59) 1969 c. 29 (NI).

(60) 1977 NI 4.

Section 5(a) (having in custody or under control anything, intending, without lawful excuse, to use, or permit use of, it to destroy or damage another's property)

Section 5(b) (having in custody or under control anything, intending, without lawful excuse, to use, or permit use of, it to destroy or damage property knowing that such an act is likely to endanger another's life)

Offences under the Criminal Law (Amendment) (Northern Ireland) Order 1977(**61**)

Article 3(1) (placing or sending an article, intending to induce a belief that it is likely to explode or ignite and cause personal injury or damage to property)

Article 3(2) (communicating information, knowing or believing it to be false and intending to induce a false belief that a bomb or other explosive device is present)

Offences under the Firearms (Northern Ireland) Order 1981(**62**)

Article 6(1) (possessing, purchasing, acquiring, manufacturing, selling or transferring any of the items referred to in Article 6(1) of the Firearms (Northern Ireland) Order 1981)

Article 6(1A) (possessing, purchasing, acquiring, manufacturing, selling or transferring any of the items referred to in article 6(1A) of the Firearms (Northern Ireland) Order 1981)(**63**)

Article 17 (possessing a firearm or ammunition, intending to endanger life or cause serious injury to property or to enable another to do so)

Article 17A (possessing a firearm or imitation firearm, intending to cause, or enable another to cause, a person to believe that he will be the victim of unlawful violence)(**64**)

Article 18(1) (making or attempting to make use of a firearm or imitation firearm, intending to resist or prevent the lawful arrest or detention of himself or any other person)

Article 18(2) (committing, or being arrested for, an offence specified in Schedule 1 of the Firearms (Northern Ireland) Order 1981 and possessing a firearm or imitation firearm without lawful object)

Article 19(1) (having a firearm or imitation firearm, intending to commit an indictable offence, or to resist arrest or to prevent the arrest of another)

Article 20(1) (having, without lawful authority or reasonable excuse, in public a loaded shot gun, loaded air weapon or any other firearm together with ammunition suitable for use in that firearm)

Article 21(1) (having a firearm, or imitation firearm when trespassing in a building without reasonable excuse)

(61) 1977 NI 16.

(62) 1981 NI 2.

(63) Article 6(1A) was inserted by regulation 4(1)(a) of the Firearms (Northern Ireland) 1981 (Amendment) Regulations 1992 (S.I. 1992/3267).

(64) Article 17A was inserted by article 3(1) of the Firearms (Amendment) (Northern Ireland) Order (1994 NI 17).

Article 21(2) (having a firearm, or imitation firearm when trespassing on land without reasonable excuse)

Article 23 (possessing any firearm or ammunition giving rise to a reasonable suspicion that such possession is not for a lawful object)

Offences under the Magistrates Courts (Northern Ireland) Order 1981(65)

Article 59 (aiding, abetting, counselling or procuring the commission of a summary offence, provided that the offence in question is described in Schedule 1 to this Order or this Schedule)

Offences under the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983(66)

Article 3 (intending to commit an offence and doing an act that is more than merely preparatory to the commission of that offence, provided that the offence in question is described in Schedule 1 to this Order or this Schedule)

Article 9 (agreeing to pursue a course of conduct which, if carried out as intended, necessarily amounts to the commission of an offence to, or would do so but for the fact that such commission is impossible, provided that the offence in question is described in Schedule 1 to this Order or this Schedule)

Offences under the Public Order (Northern Ireland) Order 1987(67)

Article 18 (using threatening, abusive, or insulting words or behaviour, displaying anything, doing any act or, being the owner or occupier of any land or premises, causing or permitting anything to be displayed or any act to be done, intending to provoke a breach of the peace or by which a breach of the peace or public disorder is likely to be occasioned)

Offences under the Road Traffic (Northern Ireland) Order 1995(68)

Article 9 (causing the death of, or grievous bodily injury to, another by driving a mechanically propelled vehicle dangerously on a road or other public place)

Article 14(1)(a) (causing the death of, or grievous bodily injury to, another by driving without due care and attention, or without reasonable consideration, and being unfit to drive through drink or drugs)

Article 14(1)(b) (causing the death of, or grievous bodily injury to, another by driving without due care and attention, or without reasonable consideration, having consumed so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit)

(65) 1961 NI 26.
(66) 1983 NI 13.
(67) 1987 NI 7.
(68) 1995 NI 18.

Article 14(1)(c) (causing the death of, or grievous bodily injury to, another by driving without due care and attention or without reasonable consideration and failing, without reasonable excuse, to provide a specimen in pursuance of Article 18 of the Road Traffic (Northern Ireland) Order 1995 within 18 hours of that incident)

Offences under the Protection from Harassment (Northern Ireland) Order 1997 **(69)**

Article 6 (causing fear in another on at least two occasions that violence will be used against him, where the offender knows or ought to know that his course of conduct will cause such fear on each of those occasions)

Offences under the Criminal Justice (Northern Ireland) Order 2003 **(70)**

Article 20 (committing assault, intending to commit buggery)

Article 21(1) (indecently assaulting a man)

(69) 1997 NI 9.
(70) 2003 NI 13.

SCHEDULE 5

Statutory offences that apply only in England and Wales and Scotland

Offences under the Firearms Act 1968(71)

Section 5(1) (possessing, purchasing acquiring, manufacturing, selling or transferring, without authorisation, any item listed in Section 5(1) of the Firearms Act 1968)(72)

Section 16 (possessing a firearm or ammunition, intending to endanger, or enable another to endanger, life)

Section 16A (possessing a firearm or imitation firearm, intending to cause, or to enable another to cause, a belief that unlawful violence will be used)(73)

Section 17(1) (using, or attempting to use, a firearm, intending to prevent or resist lawful arrest or detention)

Section 17(2) (unlawfully possessing a firearm or imitation firearm while committing an offence listed in Schedule 1 to the Firearms Act 1968)

Section 18(1) (having a firearm or imitation firearm, intending to commit an indictable offence or to resist or prevent arrest)

Section 19 (unlawfully or unreasonably possessing, without lawful authority or reasonable excuse, a loaded shot gun or air weapon or any other firearm, whether loaded or not, together with ammunition suitable for use in that firearm)

Offences under the Road Traffic Act 1988(74)

Section 1 (causing the death of another by driving a mechanically propelled vehicle dangerously on a road or other public place)(75)

Section 3A(1)(a) (causing the death of another by driving without due care and attention, or without reasonable consideration, and being unfit to drive through drink or drugs)

Article 3A(1)(b) (causing the death of another by driving without due care and attention, or without reasonable consideration, having consumed so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit)

(71) 1968 c. 27.

(72) Section 5(1) was amended by article 6(1) of, and paragraph 3(1) of the Schedule to, the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999 (SI 1999/1759); sections 1(1) to (3) of the Firearms Amendment Act 1988 (c. 45); sections 1(1) to (5) and 52(2) of, and Schedule 3 to, the Firearms (Amendment) Act 1997 (c. 5); and sections 1 and 2(7) of, and the Schedule to, the Firearms (Amendment) (No.2) Act 1997 (c. 64).

(73) Section 16A was inserted by section 1(1) of the Firearms (Amendment) Act 1994 (c. 31).

(74) 1988 c. 52.

(75) Section 1 was substituted by section 1 of the Road Traffic Act 1991 (c. 40).

Article 3A(1)(c) (causing the death of another by driving without due care and attention or without reasonable consideration and failing, without reasonable excuse, to provide a specimen in pursuance of section 7 of the Road Traffic Act 1988 within 18 hours of that incident)(76)

(76) Section 3A was inserted by section 3 of the Road Traffic Act 1991.

SCHEDULE 6

Offences under the Common Law of England and Wales and Northern Ireland and statutory offences that apply only in England and Wales and Northern Ireland

1. Offences under Common Law of England and Wales and Northern Ireland

False Imprisonment

Kidnapping

2. Statutory offences that apply only in England and Wales and Northern Ireland

Offences under the Accessories and Abettors Act 1861(77)

Section 8 (aiding, abetting, counselling or procuring the commission of an indictable offence, provided that the offence in question is described in Schedule 1, Schedule 2 or Schedule 4 to this Order or this Schedule)(78)

Offences under the Offences Against the Person Act 1861

Section 4 (soliciting, encouraging, persuading, endeavouring to persuade or proposing murder)

Section 16 (unlawfully threatening to kill, intending that the subject of the threat would fear that it would be carried out)

Section 18 (unlawfully and maliciously wounding or causing grievous bodily harm, intending to cause grievous bodily harm or to resist or prevent lawful apprehension or detention)

Section 20 (unlawfully and maliciously wounding or inflicting grievous bodily harm)

Section 21 (attempting to choke, suffocate or strangle another or attempting, by means calculated to choke, suffocate or strangle, to render that person insensible, unconscious or incapable of resistance and intending to commit an indictable offence)

Section 22 (applying or administering a stupefying or overpowering drug, matter or thing intending to commit an indictable offence)

Section 23 (unlawfully and maliciously administering a poison or destructive or noxious thing so as to endanger life or inflict grievous bodily harm)

(77) 1861 24 and 25 Vict c. 97.

(78) Section 8 was amended by section 65(4) of the Criminal Law Act 1977 (c. 45) and, in respect of Northern Ireland, section 13 of, and Schedule 1 to, the Criminal Law Act (Northern Ireland) 1967 (c. 18).

Asylum Policy Instruction October 2006
Articles 1F and 33(2)

Section 27 (unlawfully abandoning or exposing a child under 2 so as to endanger life or cause permanent injury)

Section 28 (unlawfully and maliciously exploding a substance causing burning, maiming, disfigurement, disablement or grievous bodily harm)

Section 29 (unlawfully and maliciously causing an explosion or sending or delivering an explosive substance, or placing or throwing a corrosive, destructive or explosive substance, intending to burn, maim, disfigure, disable or do grievous bodily harm)

Section 30 (unlawfully and maliciously placing or throwing an explosive substance on or near a building, ship or vessel intending to do bodily injury)

Section 32 (unlawfully and maliciously placing an obstruction on a railway or interfering with railway equipment intending to endanger safety)

Section 33 (unlawfully and maliciously throwing any object at a railway vehicle intending to injure or endanger the safety of any person in that vehicle)

Section 47 (committing assault occasioning actual bodily harm)

Offences under the International Criminal Court Act 2001(79)

Section 51 (committing genocide, a crime against humanity or a war crime against the laws of England and Wales)

Section 58 (committing genocide, a crime against humanity or a war crime against the laws of Northern Ireland)

Offences under the Nationality, Immigration and Asylum Act 2002

Section 145(1) (arranging or facilitating the arrival or travel in the United Kingdom of a person, intending to exercise control over prostitution of the victim or involving the victim in the production of obscene or indecent material)

Section 145(2) (arranging or facilitating the travel within the United Kingdom by a passenger, believing an offence to have been committed under section 145(1) of the Nationality, Immigration and Asylum Act 2002 and intending to exercise control over prostitution of him or believing that another person will exercise such control)

Section 145(3) (arranging or facilitating the departure from the United Kingdom of a passenger, intending to exercise control over prostitution of him outside the United Kingdom or believing that another person will exercise such control outside the United Kingdom)

Offences under the Female Genital Mutilation Act 2003(80)

(79) 2001, c. 17.
(80) 2003 c.31.

Asylum Policy Instruction October 2006
Articles 1F and 33(2)

Section 1(1) (excising, infibulating or otherwise mutilating the whole or part of a girl's labia majora, labia minora or clitoris)

Offences under the Sexual Offences Act 2003

Section 15(1) (meeting, or travelling, intending to meet a person under 16 who has been met or communicated with on two previous occasions, where the offender intends to do something that would constitute a relevant offence (as defined in section 15(2)(b) of the Sexual Offences Act 2003) and does not believe the victim to be over 16)

Section 16(1) (intentionally sexually touching a person under 13, or under 18, where the offender is in a position of trust in relation to the victim and does not reasonably believe that the victim is over 18)

Section 17(1) (intentionally causing or inciting another to engage in sexual activity, where the offender is a person who is 18 or over and is in a position of trust in relation to the victim, and the victim is under 13, or is under 18 and the offender does not reasonably believe that the victim is 18 or over)

Section 47(1) (intentionally obtaining the sexual services of a person under 13, or under 18 and the offender does not reasonably believe that the victim is 18 or over, where the offender has made or promised payment for those services or knows that another has made or promised payment)

Section 48(1) (intentionally causing or inciting another to become a prostitute or be involved in pornography, where the victim is under 13, or is under 18 and the offender does not reasonably believe that the victim is 18 or over)

Section 49(1) (intentionally controlling any activities of another relating to the latter's prostitution or involvement in pornography, where the victim is under 13, or is under 18 and the offender does not reasonably believe that the victim is 18 or over)

Section 50(1) (intentionally arranging or facilitating the prostitution or involvement in pornography of another, where the victim is under 13, or is under 18 and the offender does not reasonably believe that the victim is 18 or over)

Section 57(1)(a) (intentionally arranging or facilitating the arrival in the United Kingdom of another and intending to do something in respect of that person after arrival that would constitute an offence specified under section 60 of the Sexual Offences Act 2003)

Section 57(1)(b) (intentionally arranging or facilitating the arrival in the United Kingdom of another and believing that a third party is likely to do something in respect of that person after arrival that would constitute an offence specified under section 60 of the Sexual Offences Act 2003)

Section 58(1)(a) (intentionally arranging or facilitating travel within the United Kingdom by another and intending to do something in respect of that person during or after the journey that would constitute an offence specified under section 60 of the Sexual Offences Act 2003)

Section 58(1)(b) (intentionally arranging or facilitating travel within the United Kingdom by another and believing that a third party is likely to do something during or after the journey in respect of that person that would constitute an offence specified under section 60 of the Sexual Offences Act 2003)

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 72 of the Nationality, Immigration and Asylum Act 2002 (“the 2002 Act”), which applies for the purpose of the construction and application of Article 33(2) of the United Nations 1951 Convention on the Status of Refugees (“the 1951 Convention”). Article 33(2) allows a person to be removed from the United Kingdom, notwithstanding that he is a refugee within the meaning of the 1951 Convention, if he, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community. Section 72(4)(a) of the 2002 Act states that a person shall be presumed to have been convicted by a final judgement of a particularly serious crime and that he constitutes a danger to the community of the United Kingdom if he is convicted of an offence specified by order of the Secretary of State.

This Order specifies offences for the purposes of section 72(4)(a) in six Schedules. Schedule 1 specifies offences that apply throughout the United Kingdom. Schedule 2 specifies offences that apply only in England and Wales. Schedule 3 specifies offences that apply only in Scotland. Schedule 4 specifies offences that apply only in Northern Ireland. Schedule 5 specifies offences that apply only in England and Wales and Scotland. Schedule 6 specifies offences that apply only in England and Wales and Northern Ireland.

ASYLUM POLICY NOTICE 6/2004

SECTION 72 OF THE NIA ACT 2002: PARTICULARLY
SERIOUS CRIMES

The purpose of this notice is to:

- Provide guidance on section 72 of the NIA Act 2002 and its application.
- Provide standard wordings for use in dealing with cases where section 72 applies.

Purpose of Section 72

1. Section 72 of the NIA Act 2002 provides an interpretation of Article 33(2) of the 1951 Convention.
2. Article 33(2) states that a refugee may be returned to a place where they have a well-founded fear of persecution if, having been convicted of a “particularly serious crime”, they pose a danger to the community of the United Kingdom. Section 72 details the criteria of when Article 33(2) can be applied. Section 72(2) states:

A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the United Kingdom if he is –

(a) convicted in the United Kingdom of an offence, and

(b) sentenced to a period of imprisonment of at least two years.

3. Section 72 also applies where a person was convicted overseas, is sentenced to a period of imprisonment of at least two years and could, if convicted in the UK for a similar offence, have been sentenced to at least two years. (Note that it is likely to be very rare for section 72 to apply to this situation: it is designed to cover situations in which a person recognised as a refugee in the UK subsequently goes abroad, commits a crime and eventually returns to the UK; it is not intended to cover situations where a person commits a crime abroad before seeking asylum in the UK, for which cases Article 1F(b) of the Refugee Convention may be appropriate).

4. What counts for the application of section 72 is not the maximum sentence that could have been imposed, nor the time a person actually spends in prison or detention, but the period of imprisonment to which they were sentenced.
5. Subsection (4) of section 72 enables the Secretary of State to specify in an order offences in respect of which, regardless of the length of sentence imposed, there is a presumption that the offender is a danger to the community.
6. Section 72(4) states:

“A person shall be presumed to have been convicted by a final judgement of a particularly serious crime and to constitute a danger to the community of the United Kingdom if –

(a) he is convicted of an offence specified by order of the Secretary of State, or

(b) he is convicted outside the United Kingdom of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order under paragraph (a).”

7. An order has been made under subsection (4), and came into force on 12 August 2004. The order applies not only to those who commit offences after this date, but also to cases decided or appealed after the order came into force even where the offence occurred beforehand. Where it appears from the facts of the case that section 72(4)(b) applies, advice should be sought from APU via a senior caseworker. A copy of the order is attached at **Annex A**.
8. As mentioned below, the presumption that a person convicted for two or more years (or convicted of any offence covered by an order made under section 72) is a danger to the community is rebuttable.

Application of section 72

Does section 72 apply?

9. The criteria of section 72 can be applied both to persons who are already refugees and to asylum seekers.
10. Where a refugee commits a crime that falls into the criteria of section 72 and there is not a successful rebuttal of the presumption that they pose a danger to the community their removal from the United Kingdom is not contrary to the Refugee Convention.

11. Similarly, where an asylum seeker commits a crime that brings them within the scope of section 72, and where they do not rebut the presumption that they are a danger to the community their removal from the United Kingdom is not contrary to the Refugee Convention. Caseworkers should then consider both whether an applicant falls within the scope of s72 and then whether he has a well-founded fear of persecution as defined in Article 1A of the Refugee Convention. Where both circumstances apply the claim should be refused on both grounds; stating that the claim is certified under s72, and consequently the applicant is not eligible for a grant of asylum, and then whether the applicant would have qualified under 1A had s72 not applied.
12. In all cases it will be necessary to give the individual concerned an opportunity to rebut the presumption that they pose a danger to the community. Where a person seeks to argue that they are not a danger to the community, the burden will be on them (not on the Secretary of State) to show it. A successful rebuttal of this presumption, no matter how serious the offence committed, means that section 72 will not apply.
13. Cases where it is considered that a successful rebuttal has been made should always be referred to a Senior Caseworker.

How to deal with a case where section 72 applies

14. Where it appears from the facts of the case that the criteria in section 72 have been met, caseworkers should normally write to the individual seeking any comments they may have before a final decision is taken. See **Annex C** below for standard wordings.
15. On receipt of representations the caseworker must consider whether there are any grounds for holding that the person is not a danger to the community. The assessment of the danger which the wrongdoer might pose to the community should be an assessment of the present or future danger, made on the basis of evidence of their past conduct and the likelihood of their repeating such conduct in the future. There is a presumption that a person convicted of an offence which brings them within the scope of section 72 is a danger to the community – the length of sentence imposed and/or the type of offence committed indicating such a danger. However, while there is such a presumption it can be rebutted if persuasive evidence exists that an individual is no longer a danger to the community notwithstanding the offence(s) they have committed.
16. It may be appropriate to seek further information before reaching a final decision on whether or not Article 33(2) applies. Such information might be the transcript of the judge's comments at the trial, Police and/or Parole Board/Prison/Probation Service reports, which provide an assessment of the person's character near the end of the period to be spent in custody. The value of up-to-date reports is that they should indicate to what extent, during the period of custody, the individual has been able to address previous offending behaviour.

Asylum Policy Instruction October 2006
Articles 1F and 33(2)

17. Where the individual is an asylum seeker the normal procedures of information gathering should be followed i.e. SEF (if appropriate) and Interview.
18. The refusal of the asylum claim in a case where section 72 applies can be made purely on section 72 grounds where the individual would otherwise be a refugee, but where the asylum claim also falls to be refused under Article 1A of the Convention the Reasons for Refusal Letter (RFRL) should state both grounds for refusal. If the application of section 72 is appropriate the individual should be provided with an RFRL stating that the Secretary of State has relied on these provisions in refusing the claim. Reasons why we do not consider removal to be a breach of the ECHR will also need to be fully argued in the RFRL.
19. The appeal hearing will start with consideration of the section 72 certificate. If the certificate is agreed, the appeal cannot be allowed on asylum grounds. If the certificate is not agreed the merits of the asylum claim will be examined in the usual way.
20. In the event that the certificate is not agreed and substantive consideration of the asylum claim is required, the Presenting Officer will use the arguments set out in the RFRL in respect of the claim to present the case.
21. For details of the appeal rights see the API on ***Appeals – Rights of Appeal***.
22. In dealing with refugees who fall within the criteria of section 72 there will normally be no necessity to deal with any fear of persecution aspect because they have already been recognised as a refugee, although in some cases it may be appropriate to consider whether the cessation clause of the Refugee Convention applies. However, it will be necessary to consider any potential ECHR breach that might occur if removal was enforced.
23. Some cases may arise where it is not possible to remove someone who is subject to the criteria of section 72, for instance where removal would be a breach of our obligations under the ECHR. Where this is the case, consideration should be given to granting six months discretionary leave in accordance with paragraphs 2.6 and 5.1 of the API on Discretionary Leave. Where a person to whom section 72 applies has indefinite leave, but cannot be removed for some reason, consideration should be given to revoking their leave under section 76 of the Nationality, Immigration and Asylum act 2002 (***see the API on Revocation of Indefinite Leave***).

Dear Sir or Madam:

Re:

I am writing regarding your client's application for asylum in the UK. As you will be aware **you/name** is/are coming to the end of **your/his/her** prison sentence for **specify offence. [if you have details of the offence, when he/she was convicted and the sentence type (i.e. not suspended)/length you should insert here].**

Because of this conviction and sentence we consider that section 72 of the Nationality, Immigration and Asylum Act 2002, which sets out how Article 33(2) of the Refugee Convention is to be constructed, applies to **you/your** client.

Article 33(2) disapples the prohibition on *refoulement* contained in Article 33(1) of the 1951 Refugee Convention in respect of those who constitute a threat to national security or who, having been convicted by a final judgment of a particularly serious crime, constitute a danger to the community of the country in which asylum is claimed. Section 72 states that, for the purposes of Article 33(2), a person is presumed to have been convicted by a final judgment of a particularly serious crime, and to constitute a danger to the community of the United Kingdom, where s/he has:

Option 1

- a) **been convicted in the United Kingdom of an offence and,**
- b) **sentenced to a period of imprisonment of at least two years.**

Option 2

- a) **convicted of an offence specified by order of the Secretary of State, or**
- b) **convicted outside the UK of an offence and the Secretary of State certifies that in his opinion the offence is similar to an offence specified by order.**

(Insert following paragraph where Option 2(b) applies). You have been convicted outside the United Kingdom of an offence which the Secretary of State has certified is in his opinion similar to an offence specified by the order.

The consequence of section 72 applying would be that **you/your** client's claim for asylum will fall to be refused on the grounds that Article 33(2) of the 1951 Refugee Convention does not prevent **your/his/her** removal.

However, section 72(6) gives **you/your** client the opportunity to rebut the presumption that **you/he/she** constitutes a danger to the community of the UK referred to above.

We are therefore giving **you/name** the opportunity to make representations or provide evidence in order to rebut the presumption that **you/he/she are/is** a danger to the community of the United Kingdom. Any information you provide will be taken fully into consideration before a final decision is made on **your/his/her** asylum application.

Please can you send any comments to the address below by (two weeks).

Yours

You have been given the opportunity to rebut the presumption that you/your client is a danger to the community of the United Kingdom. **You/your client** have failed to make any representations to rebut this presumption/The representations **you made/you made on behalf of your client** have been taken into account, but it is not considered that you have provided any evidence to show that **you/your client are/is** not a danger to the community of the United Kingdom. [full reasons dealing with each point made in representations needs to be given].

***delete as appropriate**

Definition of 'terrorism' as laid out in the Terrorism Act 2000

1. - (1) In this Act "terrorism" means the use or threat of action where-

- (a) the action falls within subsection (2),
- (b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and
- (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

(2) Action falls within this subsection if it-

- (a) involves serious violence against a person,
- (b) involves serious damage to property,
- (c) endangers a person's life, other than that of the person committing the action,
- (d) creates a serious risk to the health or safety of the public or a section of the public, or
- (e) is designed seriously to interfere with or seriously to disrupt an electronic system.

(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

(4) In this section-

- (a) "action" includes action outside the United Kingdom,
- (b) a reference to any person or to property is a reference to any person, or to property, wherever situated,

Asylum Policy Instruction October 2006
Articles 1F and 33(2)

(c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and

(d) "the government" means the government of the United Kingdom, of a Part of the United Kingdom or of a country other than the United Kingdom.

(5) In this Act a reference to action taken for the purposes of terrorism includes a reference to action taken for the benefit of a proscribed organisation.

2. - (1) The following shall cease to have effect-

(a) the Prevention of Terrorism (Temporary Provisions) Act 1989, and

(b) the Northern Ireland (Emergency Provisions) Act 1996.

(2) Schedule 1 (which preserves certain provisions of the 1996 Act, in some cases with amendment, for a transitional period) shall have effect.